TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 504

CHARLES ALLEN TAYLOR, PETITIONER

vs.

NEIL McELROY, A. TYLER PORT.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 8, 1958
CERTIORARI GRANTED DECEMBER 15, 1958

SUPREME COURT OF THE UNITED STATES

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[fol. 1] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1069-58

CHARLES ALLEN TAYLOR, 269 Wheatfield, North Tonawanda, New York, Plaintiff,

v.

NEIL MCELROY, individually and as Secretary of the Department of Defense of the United States of America,

A. TYLER PORT, individually and as Director of the Office of Industrial Personnel Security Review of the Department of Defense of the United States of America, Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION—
Filed April 24, 1958

Plaintiff, by his attorneys, for his complaint herein alleges as follows:

1. This is a civil action for equitable relief and for declaratory judgment arising under the constitution and laws of the United States. The amount in controversy exceeds $3,000.00 exclusive of interest and costs.

2. Jurisdiction of this Court over the subject matter is founded upon United States Code, Title 28, Sections 1331, 1332, 2201 and 2202, United States Code, Title 5, Section 1909; and District of Columbia Code, Sections 11-301, 11-305, and 11-306.

3. Plaintiff is a citizen of the United States and of the State of New York and resides at 269 Wheatfield, North Tonawanda, New York.

4. Defendant Neil McElroy is Secretary of the Department of Defense of the United States of America. His [fol. 2] official residence is in the District of Columbia.

5. Defendant A. Tyler Port is Director of the Office of Industrial Personnel Security Review of the Department of Defense of the United States of America. His official residence is in the District of Columbia.

6. At all times mentioned in this Complaint, Bell Aircraft Corporation (hereinafter called Bell) was and is engaged in the manufacture of equipment for the armed forces of the United States. Pursuant to its contracts with the armed forces of the United States, Bell is prohibited from supplying, disclosing, or permitting access to, any classified information to any person to whom "the granting of clearance for access to classified defense information is not clearly consistent with the interests of national security."

7. From February 21, 1941 to September 11, 1956, plaintiff was employed by Bell in the State of New York as a tool maker. His employment required him to have access to classified defense information. During the last few years of his employment at Bell plaintiff was earning in excess of $5,000 per year.

8. On or about September 6 and September 10, 1956, plaintiff was notified by Jerome D. Fenton, the then Director of the Office of Industrial Personnel Security Review, that, pursuant to a determination by the Industrial Personnel Security Screening Board, his clearance for access to classified defense information was suspended pending further processing of his case. Attached hereto and incorporated herein as plaintiff's Exhibit "A", is the notice of suspension, covering letter, and statement of reasons furnished plaintiff on September 6 and September 10, 1956.

9. Pursuant to the suspension of plaintiff's clearance for access to classified defense information, Bell terminated plaintiff's employment on September 11, 1956, as more fully appears from plaintiff's Exhibit "B" attached hereto and made a part hereof.

[fol. 3] 10. By virtue of said suspension and certain further determinations of the Department of Defense cited hereinafter, plaintiff has lost, and has been unable to re-

gain, employment with Bell and has further been unable to obtain permanent employment anywhere.

11. On October 18, 1956, plaintiff, by his counsel, submitted to the Director of the Office of Industrial Personnel Security Review a "Notice to Produce" which is attached hereto and made a part hereof as plaintiff's Exhibit "C". In said Notice to Produce plaintiff requested to be informed of the name or names and addresses of the person or persons upon whose information the charges in the "Statement of Reasons" for suspension of his clearance for access to classified defense information were based. No response was received to said Notice.

12. On November 1, 2 and 14, 1956, plaintiff appeared at a "hearing" before the New York Industrial Personnel Security Hearing Board, 45 Broadway, New York 6, New York, consisting of Raymond A. Waldman, United States Army, Chairman; George D. Simms, United States Air Force, Member, and Commander Thomas K. Dunstan, United States Navy, Member. At the outset of said hearing, plaintiff renewed the requests appearing in his Notice to Produce (Exhibit "C" herein), all of which were refused.

13. The gist of the charges against plaintiff appearing in the Statement of Reasons for suspension (Exhibit "A" herein) was that for a period of about 18 months in 1942 and 1943 plaintiff was allegedly a member of the Communist Party of the United States. No evidence of any kind and no witnesses were produced at the hearing before the Industrial Personnel Security Hearing Board in support of the Government's charges. Plaintiff, on the other hand, produced numerous witnesses, including himself, who testified under oath as to plaintiff's good record and loyalty during the period it was alleged that he had been a member of the Communist Party. Plaintiff's complete denial of the allegations, including those of membership in, payment of dues to, and the holding of a card in, the Communist Party, [fol. 4] was corroborated by the witnesses, who testified of their own knowledge to his patriotism and loyalty and his non-Communist and anti-Communist record before, during and after the period in question.

14. On June 14, 1957, plaintiff was advised by letter from the defendant A. Tyler Port, a copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "D", that subsequent to the said hearing a determination had been reached that the granting of clearance to plaintiff for access to classified defense information "is not clearly consistent with the interests of national security."

15. On November 22, 1957, plaintiff, by his attorneys, addressed a communication to defendant Neil McElroy (attached hereto as Exhibit "E"), detailing the clear evidence of the falsity of the charges against him and requesting reversal of the decision denying him clearance.

16. On January 23, 1958, no answer having been received to the communication of November 22, 1957, plaintiff's counsel addressed a telegram to the defendant Neil McElroy stating:

> "Charles Allen Taylor, American citizen and former employee of Bell Aircraft, is unemployed because of his arbitrary and illegal denial of security clearance by your Department. Our letter of November 22, 1957 to you, detailing the incredible injustice of his case, has not been answered and informal conversations with members of your Department have failed to produce an answer. We request an immediate response from you as to when we may have an answer to our letter of November 22nd."

Plaintiff has received a reply to the telegram of January 23, 1958, from the General Counsel of the Department of Defense on February 3, 1958, stating as follows:

> "Reference is made to your letter to the Secretary of Defense requesting reversal of the decision to deny security clearance to your client, Mr. Charles Allen Taylor. Reference is also made to your wire requesting a reply to your earlier letter, and to the intervening telephone calls with members of my staff who have advised you or other members of your office that your request was under active consideration and that formal

reply to your request would be made as soon as practicable.

In consequence of your request, the case has been reviewed. The record reflects that the determination was reached after giving careful and deliberate consideration to all the evidence. The conclusion reached from this review is that the adverse determination is neither arbitrary nor capricious but is, on the contrary, reasonably supported.

[fol. 5] However, although it does not appear that the adverse determination should be reversed on the basis of the present record, yet it is believed appropriate in this instance to reopen the case and obtain any additional information that may be available. For this purpose, a further investigation has been instituted and it is expected that further proceedings will be conducted.

It is estimated that the pending investigation will be completed in about two or three weeks, after which you will receive further word."

No further word has been received from the defendants in reply to the request of November 22, 1957.

17. At no stage of the proceedings involving the suspension and denial of access to classified defense information to the plaintiff and his consequent loss of employment and reputation has plaintiff ever been confronted with or otherwise afforded opportunity to examine or become familiar with the evidence against him, including the statements or names of the person or persons who charged his alleged former affiliation with the Communist Party of the United States.

18. Plaintiff testified under oath before the Hearing Board that he has never been a member of, never paid dues to, never held a card in, never attended a meeting of, and never associated in any way whatsoever with, the Communist Party of the United States or any other organization under the domination or control of the Communist Party; and he hereby reaffirms that testimony.

19. Plaintiff is now and has always been completely and unswervingly loyal to the Government of the United States.

20. During the period the plaintiff is alleged to have been a member of the Communist Party and at all times thereafter plaintiff has been, privately and publicly, outspokenly and to the knowledge of his friends, associates and acquaintances, an anti-Communist.

21. The denial of clearance for classified information without fair hearing at which plaintiff could know the full nature and cause of the accusations against him and the names of his accusers, and only because of utterly false, unsupported and demonstrably implausible accusations that plaintiff had been a member of the Communist Party of the [fol. 6] United States, was in violation of plaintiff's rights under the Fifth Amendment to the Constitution. By virtue of the unwarranted and arbitrary denial of clearance for classified information to the plaintiff by defendants and their agents in the United States Government, plaintiff has been and continues to be denied liberty and property without due process of law.

22. Plaintiff is presently unemployed. As a result of the denial of plaintiff's security clearance, plaintiff has been deprived and will continue to be deprived of gainful employment.

23. Plaintiff has exhausted all administrative remedies available to him.

24. Plaintiff has no adequate remedy at law for the irreparable damage he has suffered and continues to suffer as a result of the unconstitutional and unlawful acts of defendants and their predecessors in the United States Government, which acts have caused him to lose his employment and have resulted in a continuing injury to and stigma upon his reputation.

Wherefore Plaintiff Prays:

1. That this Court declare that plaintiff is entitled to a full and fair hearing before defendants or their agents upon the charges against him, at which hearing he is given

opportunity to be confronted with the witnesses and the evidence upon which the charges are based.

2. That this Court declare that the determination of June 14, 1957 denying plaintiff access to classified defense information was in violation of his rights under the Fifth Amendment to the Constitution of the United States.

3. That the defendants Neil McElroy and A. Tyler Port be restrained from enforcing the determination of June 14, 1957, denying plaintiff access to classified defense information and that said denial be reversed, rescinded and annulled.

[fol. 7] 4. That plaintiff have such and further relief as to the Court may seem just and proper.

/s/ Joseph L. Rauh, Jr., /s/ John Silard, Attorneys for Plaintiff, 1631 K Street, N. W., Washington 6, D. C.

Of Counsel:

Harold A. Cranefield, 8000 East Jefferson Avenue, Detroit 14, Michigan, Richard Lipsitz, 35 Court Street, Buffalo 2, New York.

[fol. 8] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

Civil Action No. 1069-58

[Title omitted]

ANSWER TO COMPLAINT—Filed July 24, 1958

Now come the defendants, Neil McElroy, Secretary of the Department of Defense of the United States, and A. Tyler Port, Director, Office of Industrial Personnel

Security Review, Department of Defense, and for answer to the Complaint filed herein say as follows:

First Defense

The plaintiff fails to state a claim against the defendants upon which relief can be granted.

[fol. 9] Second Defense

The Court is without jurisdiction of the subject matter of this action.

Third Defense

The complaint fails to present a justiciable controversy in that the defendants have not deprived the plaintiff of any legally protected right.

Fourth Defense

The plaintiff has failed to exhaust his administrative remedies.

Fifth Defense

The actions of the defendants complained of herein were in compliance with the Constitution, applicable statutes, Executive Orders and regulations and were not arbitrary, capricious nor an abuse of discretion.

Sixth Defense

1-2. Defendants assert that inasmuch as the allegations contained in the first and second paragraphs of the complaint state conclusions of law, they are not required to plead responsively thereto, but were they required to reply they would deny the conclusions alleged therein.

3. The defendants admit the allegation of paragraph 3 of the complaint.

4-5. The defendants admit the allegations contained in paragraphs 4 and 5 of the complaint.

[fol. 10] 6. The defendants admit the allegations contained in paragraph 6 of the complaint, except that they

aver that at all times mentioned in the complaint, Bell Aircraft Corporation was also engaged in the manufacture of materials and equipment not requiring access to classified defense information. It is further averred that in the notice of Bell Aircraft Corporation advising of the denial of access to classified defense information, it was stated that this decision was not intended to prevent the plaintiff from performing such non-classified work as might be available to him. (Exhibit No. 1).

7. Answering paragraph 7 of the complaint, the defendants deny that plaintiff was employed by Bell Aircraft Corporation from February 21, 1941 to September 11, 1956. (See Exhibits No. 2 and 13 attached). Defendants admit that during the period from March 1949 to September 1956 the plaintiff was employed in duties which required his access to confidential information. The other allegations of paragraph 7 of the complaint are neither admitted nor denied since the defendants are without knowledge or information sufficient to form a belief as to the truth of these allegations.

8. The defendants admit the allegation of paragraph 8 of the complaint.

9. The defendants deny the allegations contained in paragraph 9 of the complaint, except that they admit that Bell Aircraft Corporation terminated plaintiff's employment on September 11, 1956.

10. The defendants deny the allegations contained in paragraph 10 of the complaint.

11. Answering paragraph 11 of the complaint there is no provision in the Review Regulation for a "Notice to Produce". The defendants deny that the "Notice to Produce" was submitted to the Director, Office of Industrial Personnel Security Review (See Exhibit No. 3), but admit that said "Notice" requested to be informed of the name [fol. 11] or names and addresses of the person or persons upon whose information the charges in the "Statement of Reasons" for suspension of clearance for access to classified defense information were based. Defendants further deny that no response was made to said "Notice",

and aver that paragraph 4 of the Review Regulation precluded the Director or the Hearing Board at least in part from furnishing plaintiff or his attorneys the requested information. (Exhibit No. 4).

12. The defendants admit the allegations of paragraph 12 of the complaint, except that paragraph 3 of the "Notice to Produce," which refers to the Personnel Security Questionnaires and the Certificate of Non-affiliation (Defendants Exhibit No. 2) were made available. Defendants aver that on the basis of paragraph 4 of the Review Regulation pertaining to security of classified information (Defendants Exhibit No. 4), the Hearing Board was precluded from granting plaintiff's demand in its entirety.

13. The defendants deny the allegations contained in paragraph 13 of the complaint, except that they admit that plaintiff produced a number of witnesses, including himself, who testified in his behalf as to his record and loyalty.

14. The defendants admit the allegation contained in paragraph 14 of the complaint.

15. The defendants admit that on November 22, 1957, plaintiff, by his attorneys, addressed a communication to defendant, Neil McElroy, requesting reversal of the decision denying him clearance, except that defendants deny the purported detailing of clear evidence of the falsity of the charge against him.

16. Answering paragraph 16 of the complaint, defendants admit that plaintiff's counsel, on January 23, 1958, addressed a telegram to the defendant, Neil McElroy, as set forth in paragraph 16 of the complaint. The defendants [fol. 12] further admit that plaintiff received a reply to said telegram from the General Counsel of the Department of Defense on February 3, 1958, as set forth in paragraph 16 of the complaint. The defendants deny that said reply was the sole answer to the aforementioned communication of November 22, 1957, addressed to defendant, Neil McElroy, as stated in paragraph 15 of the complaint, but rather, the defendants aver that there were numerous telephone conversations between staff members of the General Counsel's

Office of the Department of Defense and plaintiff's counsel apprising plaintiff's counsel that the request for reversal of the decision denying plaintiff clearance was under active consideration and that formal reply to said request would be made as soon as practicable, as stated more fully in the reply to plaintiff's telegram of January 23, 1958, as set forth in paragraph 16 of the complaint. Moreover, defendants state that there have been frequently written communications between plaintiff's counsel and the defendants. Further answering said paragraph defendants aver that since the complaint in this proceeding was filed, and pursuant to plaintiff's request for a hearing, a date was agreed upon, and thereafter, on July 11, 1958, 45 Broadway, in the city of New York, the hearing commenced. Plaintiff's counsel at the outset of the hearing made a demand that his client be confronted with the evidence and witnesses supporting the government's amended Statement of Reasons. Upon being advised that no live witnesses were to be presented at that time, plaintiff's attorney asserted that without confrontation of witnesses and an opportunity to examine the evidence against his client the hearing could not proceed in good faith. The hearing was thereupon adjourned. Defendants further aver that since the filing of said complaint a further session of the hearing has been proposed to be held at Buffalo, New York on July 31, 1958, and written notice thereof has been sent to plaintiff's counsel. (Exhibit Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14.)

[fol. 13] 17. The defendants deny the allegations contained in paragraph 17 of the complaint.

18. The defendants, in answering paragraph 18 of the complaint, admit that plaintiff testified before the Hearing Board as alleged in paragraph 18 of the complaint but deny that such testimony was under oath. Plaintiff was admonished as to the provisions of Section 1001 of Title 18, U.S.C., which is required by paragraph 19 F of the Review Regulation (Exhibit 4).

19. Defendants neither admit nor deny the allegation in paragraph 19 of the complaint, but do aver that defendants have sufficient knowledge and information to create a sub-

stantial question as to plaintiff's eligibility for a clearance for access to classified defense information.

20. Defendants neither admit nor deny the allegation in paragraph 20 of the complaint for the reason that defendants are without knowledge of (sic) information sufficient to form a belief as to the truth of this allegation.

21. Defendants assert that inasmuch as the allegations contained in paragraph 21 of the complaint state conclusions of law, they are not required to plead responsively thereto, but were they required to reply they would deny the statements and conclusions alleged therein.

22. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 of the complaint.

23. Defendants deny the allegations contained in paragraph 23 of the complaint. (See Exhibit Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14.)

24. Defendants assert that inasmuch as the allegations contain (sic) in paragraph 24 of the complaint state conclu-
[fol. 14] sions of law, they are not required to plead responsively thereto, but were they required to reply they would deny the conclusions alleged therein.

Wherefore, the defendants pray that the complaint be dismissed with costs to the defendants.

/s/ Oran H. Waterman, /s/ John J. Scott, /s/ Anthony F. Cafferky, Attorneys, Department of Justice, Washington 25, D. C., Attorneys for Defendants.

[fol. 15] Certificate of service (omitted in printing).

[fol. 16] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

Civil Action No. 1069-58

[Title omitted]

STIPULATION OF FACTS—Filed October 9, 1958

It is hereby stipulated by and between the parties to the above-entitled action, as follows:

1. The plaintiff is a citizen of the United States and of the State of New York and resides at 269 Wheatfield, North Tonawanda, New York. The defendant Neil McElroy is the Secretary of the Department of Defense of the United States of America. The defendant A. Tyler Port is the Director of the Office of Industrial Personnel Security Review of the Department of Defense of the United States of America. Both defendants officially reside in the District of Columbia.

2. At all times mentioned in the Complaint, the Bell Aircraft Corporation (hereinafter referred to as the Corporation) was engaged *inter alia* in the manufacture of equipment for the armed forces of the United States. As evidenced by the Affidavit of John T. Gorham, dated September [fol. 17] 23, 1958, a copy of which is attached hereto as Exhibit No. 1, during the period from 1954 to 1956, the plaintiff, in his capacity as tool and die maker, was required and would have been required in the future, to perform work on contract AF33(038)-15069, which contract provided in part: "The obligations of the Contractor under this clause shall be in addition to any obligations of the Contractor to comply with all the terms and provisions of any applicable security or secrecy agreement heretofore or hereafter entered into between the Contractor and the Government."

3. A copy of the Security Agreement entered into between the Corporation and the Government on January 8, 1952, and in force and effect at all times mentioned in the Complaint, is attached hereto as Exhibit No. 2. This Security Agreement made by reference the provisions of the Industrial Security Manual for Safeguarding Classified Information and revisions thereof a part of the said agreement. Pertinent parts of the said Manual (20 Fed. Reg. 6213) provide:

Section 66.6 (c):

"*General requirements.* The Contractor * * *

"(c) Shall exclude (this does not imply the dismissal or separation of any employee) from any part of his plants, facilities, or sites at which classified work for any military department is being performed, any person or persons whom the Secretary of the military department concerned or his duly authorized representative, in the interest of security, may designate in writing."

* * * * *

Subpart B:

"The classification of defense information shall be determined by the Government and the Contractor shall be notified of such security classification. * * *."

[fol. 18]

* * * * *

Section 66.16:

"*General.* An individual shall be permitted to have access to classified information only when cleared by the Government or by the contractor, as the case may be, as specified by this subpart. He will be given access to such material on a 'need to know' basis and only to the extent of his clearance. * * *."

* * * * *

Section 66.18:

"*After award of contract.* (a) In the event a contract is awarded, in addition to those individuals

cleared under the provision of § 66.17, access to classified information, except as provided in paragraph (b) of this section, is authorized only to individuals as specified in the following:

"(1) United States citizen employees of the contractor who require access to information classified 'Top Secret' or 'Secret' * * * and who have been cleared by the Government."

* * * * *

Section 66.20:

"*Application for clearance.* (a) Except for those individuals who are exempt, * * * applications shall be made by the contractor for his * * * employees for whom Government clearance is required as specified in §§ 66.17, 66.18 (a) (1) and (2), and (b). Applications shall be made to the security office of the cognizant Military Department by submission of the following:

"(1) Five signed copies of DD Form 48, 'Personnel Security Questionnaire,' and five signed copies of DD Form 48-1, 'Certificate of Nonaffiliation with Certain Organizations,' (forms to be furnished by the security office of the cognizant Military Depart-
[fol. 19] ment) completed and executed by United States citizens."

The Security Agreement aforesaid provides, among other things, the following:

"The Government also agrees upon written application of the Contractor to designate employees of the Contractor who may have access to *matter classified Top Secret or Secret;* * * *." (Emphasis in original).

4. As evidenced by the Affidavit of Peter J. Wacks, dated September 16, 1958, a copy of which is attached hereto as Exhibit No. 3, in order to utilize the plaintiff in his capacity as tool and die maker on Contract AF33(038)-15069, which contract requires that individuals having access to infor-

mation pertaining to that contract be cleared "Secret", the plaintiff was required to complete the Personnel Security Questionnaire (DD Form 48) and allied forms as required by the Industrial Security Manual for Safeguarding Classified Information (20 Fed. Reg. 6213) (DD Form 441 attachment). The plaintiff submitted these forms on September 8, 1954 (and again on July 2, 1956). These forms were in turn submitted by the Corporation to the Department of Defense for the accomplishment of the investigation necessary to substantiate a "Secret" personnel security clearance. (Photostatic copies of three of the forms submitted by the plaintiff are attached to the Answer to Complaint as Exhibit No. 2.)

5. During the last few years of his employment with the Corporation plaintiff's earnings were in excess of $5,000.00 per year. A summary of plaintiff's history of employment with the Corporation in (sic) contained in the Affidavits of Peter J. Wacks, dated September 16, 1958; John T. Gorham, dated July 21, 1958; and the plaintiff, dated September 9, 1958, which affidavits are attached hereto as Exhibits No. 3, 4 and 5, respectively.

6. On September 6, 1956, Jerome D. Fenton, then Director of the Office of Industrial Security Review, sent the Corporation a letter, a copy of which is attached hereto as Exhibit No. 6.

7. On September 10, 1956, Jerome D. Fenton sent the plaintiff a Notice of Suspension of Clearance dated September 6, 1956; a letter of instruction outlining plaintiff's pro-
[fol. 20] cedural rights dated September 10, 1956; a Statement of Reasons; and a copy of Department of Defense Directive No. 5220.6, entitled "Industrial Personnel Security Review Regulation", dated February 2, 1955. Copies of the September 6 Notice of Suspension of Clearance, the September 10 letter of instruction and the Statement of Reasons are collectively attached hereto as Exhibit No. 7. (A copy of the Industrial Personnel Security Review Regulation (20 Fed. Reg. 1553) is attached to the Answer to Complaint as Exhibit No. 4.)

8. On September 11, 1956, plaintiff's employment with the Corporation was terminated by the Corporation. A copy of the letter from the Corporation to the plaintiff terminating his employment is attached hereto as Exhibit No. 8.

9. On October 9, 1956, plaintiff's counsel Richard Lipsitz sent a letter to the Office of Industrial Personnel Security Review, which letter contained as an enclosure an affidavit of the plaintiff in reply to the Statement of Reasons. This letter with its enclosure is attached hereto as Exhibit No. 9.

10. On October 15, 1956, T. L. White, Executive Secretary of the New York Industrial Personnel Security Hearing Board, sent the plaintiff a letter, a copy of which is attached hereto as Exhibit No. 10.

11. On October 18, 1956, plaintiff's counsel Richard Lipsitz sent the New York Industrial Personnel Security Hearing Board (hereinafter referred to as the Hearing Board) a letter, a copy of which is attached hereto as Exhibit No. 11. Enclosed with this letter was a document entitled "Notice to Produce", a copy of which is attached hereto as Exhibit No. 12.

12. On November 1, 2 and 14, 1956, plaintiff appeared at a hearing before the Hearing Board at 45 Broadway, New York 6, New York, composed of Raymond A. Waldman, United States Army, Chairman; George D. Simms, United States Air Force, Member; and Commander Thomas K. Dunstan, United States Navy, Member. With respect to the requests appearing in the aforementioned "Notice to Produce" (Exhibit No. 12), the following colloquy occurred between counsel and the Chairman on page 8 of the official transcript:

> [fol. 21] "Chairman Waldman: Now, Mr. Lipsitz, I will take up next the Notice to Produce, which has heretofore been served on this Board which is dated October 18, 1956, in which you demand, on behalf of Mr. Taylor, that we produce certain information at this hearing, and I notice there are nine paragraphs in the Notice to Produce.

"I would like, first, to know whether you are at this time making that demand?

"Mr. Lipsitz: I am repeating the same demands that are contained in that, yes, sir.

"Chairman Waldman: Well, we will have available for you a request which you make in paragraph 3, which refers to Personnel Security Questionnaire.

"All other items, paragraphs 1 through 9, inclusive, except paragraph 3 cannot be complied with at this time by the Board since all those items, except paragraph 3, are deemed by the Board to come within the prohibition of paragraph 4 of the Department of Defense Directive 5220.6, dated February 2, 1955."

13. The hearing referred to in paragraph 12 was had upon the aforementioned Statement of Reasons, Exhibit No. 7. The Government put on no witnesses, nor did it disclose the investigative reports on which the Statement of Reasons was based. The plaintiff took the stand, and presented a number of witnesses in regard to his record and his loyalty.

14. On June 13, 1957, the defendant A. Tyler Port wrote a letter to the Corporation, a copy of which is attached hereto as Exhibit No. 13.

15. On June 14, 1957, the defendant A. Tyler Port wrote a letter to the plaintiff advising him that subsequent to the hearing referred to in paragraphs 12 and 13 of this Stipulation, *supra*, a determination had been reached that, on the available information, the granting of clearance to the plaintiff for access to classified defense information was not clearly consistent with the interests of national security. A copy of this letter is attached hereto as Exhibit No. 14.

[fol. 22] 16. On November 22, 1957, the plaintiff, by his attorneys Joseph L. Rauh, Jr., and John Silard, addressed a communication to the defendant Neil McElroy requesting reversal of the decision denying him clearance. A copy of this letter is attached hereto as Exhibit No. 15.

17. Between November 22, 1957 and January 23, 1958, plaintiff's counsel and officials of the Department of Defense engaged in numerous telephone conversations regarding plaintiff's case.

18. On January 23, 1958, plaintiff's attorneys Joseph L. Rauh, Jr., and John Silard addressed a telegram to the defendant Neil McElroy. A copy of this telegram is attached hereto as Exhibit No. 16.

19. On February 3, 1958, Robert Dechert, General Counsel of the Department of Defense, sent plaintiff's attorney Joseph L. Rauh, Jr., a letter, a copy of which is attached hereto as Exhibit No. 17.

20. On April 24, 1958, plaintiff instituted this action.

21. On May 30, 1958, Robert Dechert wrote plaintiff's attorney Joseph L. Rauh a letter, a copy of which is attached hereto as Exhibit No. 18.

22. On June 5, 1958, plaintiff's attorney Joseph L. Rauh, Jr., sent a letter to the Hearing Board. A copy of this letter and its enclosure is attached hereto as Exhibit No. 19.

23. On June 6, 1958, T. L. White wrote plaintiff's attorney Joseph L. Rauh, Jr., a letter, a copy of which is attached hereto as Exhibit No. 20.

24. On June 10, 1958, plaintiff's attorney Joseph L. Rauh, Jr., sent a letter to Robert Dechert. A copy of this letter is attached hereto as Exhibit No. 21.

25. On June 16, 1958, Robert Dechert wrote plaintiff's attorney Joseph L. Rauh, Jr., a letter, a copy of which is attached hereto as Exhibit No. 22.

26. On June 19, 1958, T. L. White sent the plaintiff a letter of instruction which contained as an enclosure an Amended Statement of Reasons. A copy of this letter and the aforementioned Amended Statement of Reasons is at- [fol. 23] tached hereto as Exhibit No. 23.

27. On June 25, 1958, plaintiff's attorneys Joseph L. Rauh, Jr., and John Silard sent a letter to T. L. White, which letter contained as an enclosure plaintiff's sworn Reply to Amended Statement of Reasons. This letter with its enclosure is attached hereto as Exhibit No. 24.

28. On June 30, 1958, T. L. White sent a letter to plaintiff's attorney Joseph L. Rauh, Jr., a copy of which is attached hereto as Exhibit No. 25.

29. On July 1, 1958, T. L. White sent a letter to plaintiff's attorney Joseph L. Rauh, Jr., a copy of which is attached hereto as Exhibit No. 26.

30. On July 11, 1958, a further hearing was held before the Hearing Board, composed of Raymond A. Waldman, United States Army, Chairman; George D. Simms, United States Air Force, Member; and Commander Daniel M. Gilmartin, United States Navy, Member. At the outset of the hearing and again during the course of it, plaintiff's counsel was informed by the Hearing Board that efforts to obtain witnesses were still incomplete. Also during this hearing the attached Exhibits Nos. 23, 24, 25 and 26 were placed into the record. Thereafter plaintiff's attorney Joseph L. Rauh, Jr., asked eighteen questions concerning the Amended Statement of Reasons. The Hearing Board answered three of the questions and declined to answer the remainder on the ground that giving the requested information is precluded by paragraph 4 of the Department of Defense Directive No. 5220.6, dated February 2, 1955 (20 Fed. Reg. 1553; Answer to Complaint, Exhibit No. 4). A copy of the official transcript, pages 41 through 49,* containing these questions and the Hearing Board's responses, as well as plaintiff's attorney's closing remarks, is attached hereto as Exhibit No. 27. Plaintiff's counsel Joseph L. Rauh, Jr., took the position that without confrontation of witnesses and an opportunity to examine the information against the plaintiff, the hearing could not proceed in good faith. Plaintiff did not present additional evidence, either personally or through witnesses, although he was afforded an opportunity to do so.

[fol. 24] 31. On July 23, 1958, T. L. White wrote a letter to plaintiff's attorney Joseph L. Rauh, Jr. A copy of this letter is attached hereto as Exhibit No. 28.

32. On July 25, 1958, plaintiff's attorney Joseph L. Rauh, Jr., wrote a letter to T. L. White, a copy of which is attached hereto as Exhibit No. 29.

33. On August 1, 1958, a further hearing was held before the Hearing Board, composed of Raymond A. Waldman, United States Army, Chairman; George D. Simms, United States Air Force, Member; and Commander Daniel M.

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* Printed herein at pages 88 through 93.

Gilmartin, United States Navy, Member. During this hearing, the Chairman read into the record information obtained from six confidential sources. A copy of the official transcript, pages 60 through 63,* containing this information is attached hereto as Exhibit No. 30. Thereafter plaintiff's attorney John Silard asked one hundred and sixty-two questions relative to the aforementioned information read into the record. A copy of the official transcript, pages 66 through 81,** containing these questions is attached hereto as Exhibit No. 31. The Board then ruled that so long as the questions were in the record unruled upon that the record could not be closed. The Hearing Board then agreed to permit plaintiff's attorney John Silard to make a closing argument and to answer the questions in writing later, and then to await Mr. Silard's reply to the Hearing Board's response to Mr. Silard's series of questions before closing the hearing. A copy of the official transcript, pages 86 through 87 and 107 through 108,† relating to the foregoing ruling and agreement is attached hereto as Exhibit No. 32.

34. On August 11, 1958, T. L. White sent a letter to plaintiff's attorney Joseph L. Rauh, Jr., a copy of which is attached hereto as Exhibit No. 33.

35. On August 13, 1958, plaintiff's attorney Joseph L. Rauh, Jr., sent a telegram to T. L. White, a copy of which is attached hereto as Exhibit No. 34.

36. On September 12, 1958, plaintiff moved for summary judgment.

[fol. 25] 37. On September 17, 1958, plaintiff's attorney Joseph L. Rauh, Jr., sent a telegram to the defendant A. Tyler Port. A copy of this telegram is attached hereto as Exhibit No. 35.

/s/ Anthony F. Cafferky, /s/ Benjamin C. Flannagan, Attorneys, Department of Justice, Washington 25, D.C., Attorneys for Defendants.

/s/John Silard, /s/Joseph L. Rauh, Jr., Rauh & Levy, Esqs., 1631 K Street, N.W., Washington, D.C., Attorneys for Plaintiff.

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* Printed herein at pages 102 through 104.

** Printed herein at pages 104 through 114.

† Printed herein at pages 114 and 115.

[fol. 26]

EXHIBIT NO. 1 TO STIPULATION OF FACTS

BELL Aircraft CORPORATION
POST OFFICE BOX ONE • BUFFALO 5, NEW YORK

AFFIDAVIT

I, John T. Gorham, Manager, Industrial Security Department, Bell Aircraft Corporation, do solemnly swear and affirm that the following information is true to the best of my knowledge and belief.

During the period from 1954 to 1956 Charles Allen Taylor, in his capacity as tool and die maker, was required and would have been required in the future, to perform work on contract AF33(038) 15069 as stated in the affidavit of Peter J. Wacks, Assistant Vice President—Industrial Relations and Security, dated September 16, 1958.

The attached security requirements are a part of contract AF33(038) 15069.

JOHN T. GORHAM, Manager
Industrial Security
Bell Aircraft Corporation

Subscribed and sworn to before me, a duly authorized Notary Public in and for the County of Niagara, State of New York, this ..... day of ....., 1958.

.....

[fol. 27]

BELL Aircraft CORPORATION
POST OFFICE BOX ONE • BUFFALO 5, NEW YORK

33. Military Security Requirements. A.F. 33(038)15069

(a) The provisions of the following paragraphs of this clause shall apply only if and to the extent that this contract involves access to classified matter, which as used in this clause shall mean information or material classified "Top Secret", "Secret", "Confidential", or "Restricted".

(b) The Contractor (i) shall be responsible for safeguarding all classified matter and shall not supply or disclose classified matter to any unauthorized person, (ii) shall not make or permit to be made any reproductions of matter classified "Top Secret" except with the prior written authorization of the Contracting Officer, (iii) shall not make or permit to be made any reproductions of matter classified "Secret", "Confidential", or "Restricted" except as may be essential to performance of the contract, (iv) shall submit to the Contracting Officer, at such times as the Contracting Officer may direct, an accounting of all reproductions of matter classified "Top Secret", "Secret", or "Confidential", and (v) shall not incorporate in any other project any special features of design or construction which will disclose classified matter, except with the prior written authorization of the Contracting Officer.

(c) Except with the prior written consent of the Secretary or his duly authorized representative, the Contractor (i) shall not permit any alien to have access to classified matter, and (ii) shall not permit any individual to have access to matter classified "Top Secret" or "Secret".

(d) The Contractor agrees (i) to submit immediately to the Contracting Officer a complete confidential report of any information which the Contractor may have concerning existing or threatened espionage, sabatoge, or subversive activity, (ii) to submit to the Contracting Officer, upon written request, any and all information which the Contractor may have concerning any of its employees engaged in any work at any plant, factory, or site at which work under this contract is being performed, and (iii) to exclude from its plant, factory, site or part thereof, at which work under this contract is being performed, any person or persons whom the Secretary or his duly authorized representative, in the interest of security, may designate in writing.

(e) The Contractor is authorized to rely on any letter or other written instrument signed by the Contracting

Officer, changing or entirely removing the classification of this contract or of any classified matter.

(f) The obligations of the Contractor under this clause shall be in addition to any obligations of the Contractor to comply with all the terms and provisions of any applicable security or secrecy agreement heretofore or hereafter entered into between the Contractor and the Government.

(g) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified matter, provisions which shall conform substantially to the language of this clause, including this paragraph (g); provided, that such provisions need not be included in any subcontract as to which the Contracting Officer shall consent to the omission of such provisions.

[fol. 28]

EXHIBIT NO. 2 TO STIPULATION OF FACTS

DEPARTMENT OF DEFENSE SECURITY AGREEMENT

THIS AGREEMENT, entered into this 8th day of January 1952 by and between THE UNITED STATES OF AMERICA through the Department of Air Force acting for the Department of Defense (hereinafter called the Government) and (i) BELL AIRCRAFT CORPORATION a corporation organized and existing under the laws of the State of New York

(ii) a partnership consisting of

(iii) an individual trading as

with its principal office and place of business in the Town of Wheatfield, Niagara County, New York (hereinafter called the Contractor). WITNESSETH THAT:

WHEREAS, the Government, through the Department of the Army, the Department of the Navy and/or the Department of the Air Force, has in the past purchased or may in the future purchase from the contractor supplies or services

which are required and necessary to the national defense of the United States; or may invite bids or request quotations on proposed contracts for the purchase of supplies or services which are required and necessary to the national defense of the United States; and

WHEREAS, it is essential that certain security measures be taken by the Contractor prior to and after his being accorded access to classified matter; and

WHEREAS, the parties desire to define and set forth the precautions and specific safeguards to be taken by the Contractor and the Government in order to preserve and maintain the security of the United States through the prevention of improper disclosure of information derived from matters affecting the national defense; sabotage; or any other act detrimental to the security of the United States:

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises herein contained, the parties hereto agree as follows:

SECTION I—SECURITY CONTROLS

(A) The Contractor agrees to provide and maintain a system of security controls within its or his own organization in accordance with the requirements of the Department of Defense Industrial Security Manual attached hereto and made a part of this agreement, subject, however, (i) to any revisions of the Manual required by the demands of national security as determined by the Government, notice of which has been furnished to the contractor, and (ii) to mutual agreements entered into by the Parties in order to adopt the Manual to the Contractor's business and necessary procedures thereunder. In order to place in effect such security controls. the Contractor further agrees to prepare *Standard Practice Procedures* for its or his own use, such procedures to be consistent with the Department of Defense Industrial Security Manual. In the event of any inconsistency between the Contractor's Standard Practice Procedures and the Department of Defense Industrial Security Manual as the same may be revised, the Manual shall control.

(B) The Government agrees that it shall indicate when necessary by classification *(Top Secret, Secret, Confidential, or Restricted)*, the degree of importance to the national defense of information pertaining to supplies, services and other matters to be furnished by the Contractor to the [fol. 29] Government or the Government to the Contractor, and the Government shall give written notice of such classification to the Contractor and of any subsequent changes thereof; provided, however, that matters requiring classification will be assigned the least restrictive classification consistent with proper safeguarding of the matter concerned since overclassification causes unnecessary operational delays and depreciates the importance of correctly classified matter. The Contractor is authorized to rely on any letter or other written instrument signed by the contracting officer changing the classification of matter. The Government also agrees upon written application of the Contractor to designate employees of the Contractor who may have access to matter *classified Top Secret or Secret;* and alien employees to have access to *any classified matter,* or in the case of contracts for furnishing or constructing aircraft, aircraft parts, or aeronautical accessorise, to have access to the plans or Specifications, or to the work under construction, or to participate in the contract trials, whether such aeronautical contracts are classified or not.

(C) The Contractor agrees that it or he shall determine that any sub-contractor, sub-bidder, individual, or organization proposed by it or him for the furnishing of supplies or services which will involve access to classified matter in its or his custody has executed a Department of Defense Security Agreement which is still in effect, with any Military Department, prior to being accorded access to such classified matter.

Section II—Inspection

Designated representatives of the Government responsible for inspection pertaining to industrial plant security shall have the right to inspect at reasonable intervals the

procedures, methods, and facilities utilized by the Contractor in complying with the requirements of the terms and conditions of the Department of Defense Industrial Security Manual. Should the Government, through its authorized representatives, determine that the Contractor's security methods, procedures, or facilities do not comply with such requirements, it shall submit a written report to the Contractor advision him of the deficiencies.

Section III—Modification

Modification of this security agreement *(as distinguished from the Industrial Security Manual, which may be modified in accordance with Section I of this agreement)* may be made only by written agreement of the parties hereto.

Section IV—Termination

This agreement shall remain in effect until terminated through the giving of 30 days written notice to the other party of intention to terminate; provided, however, not withstanding any such termination, the terms and conditions of this agreement shall continue in effect so long as the contractor has classified matter in his possession or under his control.

Section V—Prior Security Agreements

As of the date hereof, this security agreement replaces and succeeds any and all prior security or secrecy agreements, understandings and representations with respect to the subject matter included herein, entered into between the Contractor and the Department of the Army, the Department of the Navy and/or the Department of the Air Force, *provided*, that the term "security or secrecy agreements, understandings and representations" shall not include agreements, understandings and representations contained in contracts for the furnishing of supplies or services to the Government heretofore entered into between the Contractor and the Department of the Army, the Department of the Navy and/or the Department of the Air Force.

SECTION VI—SECURITY COSTS

This agreement does not obligate Government funds, and the Government shall not be liable for any costs or claims of the Contractor arising out of this agreement or instructions issued hereunder. *It is recognized, however, that the parties may provide in other written contracts for security costs which may be properly chargeable thereto.*

[fol. 30] IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written:

THE UNITED STATES OF AMERICA

/s/ Walter A. Hardie

By WALTER A. HARDIE
Colonel, USA
Air Provost Marshal
Inspector General's Office

.....

AUTHORIZED REPRESENTATIVE OF THE GOVERNMENT

BELL AIRCRAFT CORPORATION
CORPORATION

By /s/ Ray P. Whitman
First Vice President

WITNESS

....

....

FIRM

NOTE—In case of corporation, witnesses not required but certificate below must be completed. Type or print names under all signatures. .....

TITLE

.....

ADDRESS

NOTE—Contractor, if a corporation, should cause the following certificate to be executed under its corporate seal, pro-

vided that the same officer shall not execute both the agreement and the certificate.

CERTIFICATE

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1. JOSEPH E. CONNERS certify that I am the Assistant Secretary of the corporation named as Contractor herein; that RAY P. WHITMAN, who signed this agreement on behalf of the Contractor, was then, First Vice President of said corporation; that said agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

(Corporate Seal) /s/ Joseph E. Conners
SIGNATURE

[fol. 31]

EXHIBIT NO. 3 TO STIPULATION OF FACTS

BELL Aircraft CORPORATION
POST OFFICE BOX ONE BUFFALO 5, NEW YORK

AFFIDAVIT

I, PETER J. WACKS, Assistant Vice President for Industrial Relations and Security, Bell Aircraft Corporation, do solemnly swear and affirm that the following information is true to the best of my knowledge and belief. This Affidavit is being submitted to correct the Contract Number which appears in Paragraph 4 of the Affidavit of JOHN T. GORHAM. In all other respects the Affidavit of JOHN T. GORHAM is correct.

The records of the Bell Aircraft Corporation, P. O. Box 1, Buffalo 5, New York indicate that CHARLES ALLEN TAYLOR, DOB: 7 September 1905, SSN: 07-03-4900 was hired on 21 February 1941 as a milling machine operator (all around) and that he was laid off due to reduction in force on 16 November 1948. During this time, CHARLES ALLEN TAYLOR was granted a company confidential clearance for access to classified information up to and including confi-

dential in order to perform his duties with the corporation. This company confidential clearance was granted in accordance with the security agreement then in effect by the United States Government and Bell Aircraft Corporation.

The records of the corporation further disclose that CHARLES ALLEN TAYLOR was reinstated on 2 March 1949 and was continuously employed until 11 September 1956 at which time his employment was terminated by the corporation. During this later period (1 March 1949 to 11 September 1956), CHARLES ALLEN TAYLOR was granted a company confidential clearance on or about 30 March 1949 for access to classified information up to and including confidential which was required because of the duties he was performing.

[fol. 32] In order to utilize CHARLES ALLEN TAYLOR in his capacity as tool and die maker on Contract AF33(038)-15069, which contract required that individuals having access to information pertaining to that contract be cleared Secret, CHARLES ALLEN TAYLOR was required to complete the personnel security questionnaire and allied forms as required by the Industrial Security Manual for safeguarding Classified Information (DD Form 441 attachment). CHARLES ALLEN TAYLOR submitted these forms on 8 September 1954 and the forms were in turn submitted to the Department of Defense for the accomplishment of the investigation necessary to substantiate a Secret personnel security clearance. In order to perform his duties while retained in Bell Aircraft's employ, it was necessary, and would still be necessary, for CHARLES ALLEN TAYLOR as a tool maker to have a Secret personnel security clearance.

Under the date of 6 September 1956, Bell Aircraft Corporation received a letter from the Office of Industrial Personnel Security Review suspending any and all clearance then held by CHARLES ALLEN TAYLOR. On 11 September 1956, CHARLES ALLEN TAYLOR's employment with Bell Aircraft Corporation was terminated.

The records of Bell Aircraft Corporation indicate that the corporation has been continuously performing on classified government contracts since 1940 and that during this

period Bell Aircraft Corporation was cleared for access to classified information up to and including Top Secret.

Peter J. Wacks
Assistant Vice President
Industrial Relations & Security
Bell Aircraft Corporation

Subscribed and sworn to before me a duly authorized notary public in and for the County of Niagara, State of New York, on this the ..... day of ....., 1958.

.....

[fol. 33]

EXHIBIT NO. 4 TO STIPULATION OF FACTS

BELL Aircraft CORPORATION
POST OFFICE BOX ONE BUFFALO 5, NEW YORK

AFFIDAVIT

I, JOHN T. GORHAM, Manager, Industrial Security Department of Bell Aircraft Corporation, do solemnly swear and affirm that the following information is true to the best of my knowledge and belief:

The records of the Bell Aircraft Corporation, P. O. Box 1, Buffalo 5, New York indicate that CHARLES ALLEN TAYLOR, DOB: 7 September 1905, SSN: 07-03-4900 was hired on 21 February 1941 as a milling machine operator (all around) and that he was laid off due to reduction in force on 16 November 1948. During this time, CHARLES ALLEN TAYLOR was granted a company confidential clearance for access to classified information up to and including confidential in order to perform his duties with the corporation. This company confidential clearance was granted in accordance with the security agreement then in effect by the United States Government and Bell Aircraft Corporation.

The records of the corporation further disclose that CHARLES ALLEN TAYLOR was reinstated on 2 March 1949

and was continuously employed until 11 September 1956 at which time his employment was terminated by the corporation. During this later period (1 March 1949 to 11 September 1956), CHARLES ALLEN TAYLOR was granted a company confidential clearance, on or about 30 March 1949 for access to classified information up to an including confidential which was required because of the duties he was performing.

In order to utilize CHARLES ALLEN TAYLOR in his capacity as tool and die maker on Contract 33(038)20130, which contract required that individuals having access to information pertaining to that contract be cleared Secret, CHARLES ALLEN TAYLOR was required to complete the personnel secur- [fol. 34] ity questionnaire and allied forms as required by the Industrial Security Manual for Safeguarding Classified Information (DD Form 441 attachment). CHARLES ALLEN TAYLOR submitted these forms on 8 September 1954 and the forms were in turn submitted to the Department of Defense for the accomplishment of the investigation necessary to substantiate a Secret personal security clearance. In order to perform his duties while retained in Bell Aircraft's employ, it was necessary, and would still be necessary, for CHARLES ALLEN TAYLOR as a tool maker to have a Secret personal security clearance.

Under the date of 6 September 1956, Bell Aircraft Corporation received a letter from the Office of Industrial Personal Security Review suspending any and all clearance then held by CHARLES ALLEN TAYLOR. On 11 September 1956, CHARLES ALLEN TAYLOR's employment with Bell Aircraft Corporation was terminated.

The records of Bell Aircraft Corporation indicate that the corporation has been continuously performing on classified government contracts since 1940 and that during this period Bell Aircraft Corporation was cleared for access to classified information up to and including Top Secret.

/s/ John T. Gorham

JOHN T. GORHAM
Manager, Industrial Security
Bell Aircraft Corporation

Subscribed and sworn to before me a duly authorized notary public in and for the County of Niagara, State of New York on this the 21st day of July, 1958

/s/ Mary A. Flynn

MARY A. FLYNN
Notary Public in the State of New York
Residing in Erie Co. at time of Appointment
My Commission expires Mar. 30, 1959

[fol. 35]

EXHIBIT NO. 5 TO STIPULATION OF FACTS

CITY OF BUFFALO :
STATE OF NEW YORK : SS.

CHARLES ALLEN TAYLOR, being duly sworn, deposes and says:

1. I am the plaintiff in Civil Action No. 1069-58 in the United States District Court for the District of Columbia.

2. With the exception of minor interruptions in employment, I was continuously employed as a tool maker or otherwise by Bell Aircraft Corporation in the State of New York, from 1941 until September 11, 1956, except for employment by the same employer at facilities in the State of Vermont from October 28, 1944 to August 14, 1946. Prior to the termination of my employment at Bell Aircraft Corporation I was earning in the vicinity of $5,000.00 per year. My wages in 1954 were $5,704.39; in 1955 they were $4,808.82, and up to September 11, 1956, were $3,961.01.

3. Since the suspension of my security clearance and my discharge from employment on September 11, 1956, I am positive that because of that suspension, I have been unable to find permanent employment in my craft, or otherwise, and have had to subsist on various temporary and part-time work. Since September 11, 1956, I have been

employed at A. J. Nowak, N. Tonawanda, New York, as a tool maker for approximately two weeks during 1956. In 1957 I was employed at General Riveters, Inc., Buffalo, New York, as a layout man from June 20, 1957, to January 3, 1958. In 1958 I have been employed as a salesman of Encyclopedia Americana in Buffalo, Niagara Falls, N. Tonawanda, and Tonawanda, New York, from on or about February 1, 1958 to July 1, 1958.

4. My total earnings in 1956 since discharge from Bell Aircraft Corporation were $181.70; in 1957 my total earnings were $1,718.07 and my total net earnings in 1958 to date are $497.00. I have no present further expectations of employment in 1958.

/s/ Charles A. Taylor

Sworn to before me this
9th day of September, 1958.

/s/ Richard Lipsitz

RICHARD LIPSITZ
Notary Public State of New York
Qualified in Erie County
My Commission Expires Mar. 30, 1957

[fol. 36]

EXHIBIT NO. 6 TO STIPULATION OF FACTS

OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON 25, D. C.

SEP 6 1956

Bell Aircraft Corporation
Post Office Box 1
Buffalo 5, New York

Attn: Security Officer

Gentlemen:

Reference is made to the following case which has been received by this Office for processing under the provisions of Department of Defense Directive No. 5220.6, entitled

"Industrial Personnel Security Review Regulation", dated February 2, 1955:

Name of Individual:	TAYLOR, Charles Allen
Date of Birth:	September 7, 1905
Place of Birth:	Hamilton, Canada
Employer:	Bell Aircraft Corporation, Buffalo, New York

After considering all of the information available to it, the Industrial Personnel Security Screening Board has determined that any existing clearance which this individual may have for access to Army, Navy, or Air Force classified defense information should be suspended.

Pursuant to the determination of the Screening Board and in accordance with the provisions of the aforementioned Directive, I have, effective today, issued a suspension which will remain in effect pending the further processing of the case under the Directive. A copy of the Notice of Suspension is enclosed for your reference.

Three (3) days following the date of dispatch of this communication, the Notice of Suspension will be mailed to the individual together with a Statement of Reasons prepared by the Screening Board.

Yours very truly,

Jerome D. Fenton
Director
Office of Industrial Personnel Security Review

1 Incl
Cpy Notice of Suspension

C 1816

[fol. 37]

EXHIBIT No. 7 TO STIPULATION OF FACTS

OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON 25, D. C.

REGISTERED MAIL
RETURN RECEIPT REQUESTED
DELIVER TO ADDRESSEE ONLY

Sep 6 1956

Dear Mr. Taylor:

NOTICE OF SUSPENSION OF CLEARANCE

Pursuant to Department of Defense Directive No. 5220.6, entitled "Industrial Personnel Security Review Regulation", dated February 2, 1955, this Office has received for consideration the matter of your clearance for access to Army, Navy, or Air Force classified defense information at Bell Aircraft Corporation, Post Office Box 1, Buffalo, New York

You are hereby notified that, pursuant to a determination made in your case by the Industrial Personnel Security Screening Board, and in accordance with the provisions of the aforementioned Directive, any existing clearance you may have for access to Army, Navy, or Air Force classified defense information is suspended, effective today. This suspension will remain in effect pending the further processing of your case in accordance with the provisions of the Directive.

Very truly yours,

(s) Jerome D. Fenton

JEROME D. FENTON
Director
Office of Industrial Personnel Security Review

Mr. Charles Allen Taylor
269 Wheatfield
North Tonawanda, New York

C1814

[fol. 38]

OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON 25, D. C.

REGISTERED MAIL
RETURN RECEIPT REQUESTED
DELIVER TO ADDRESSEE ONLY

Sep 10 1956

Mr. Charles Allen Taylor
269 Wheatfield
North Tonawanda, New York

Your attention is invited to the enclosed Notice of Suspension notifying you that, pursuant to a determination of the Industrial Personnel Security Screening Board, and in accordance with the provisions of Department of Defense Directive No. 5220.6, entitled "Industrial Personnel Security Review Regulation", dated February 2, 1955, any existing clearance you may have for access to Army, Navy, or Air Force classified defense information has been suspended.

Also enclosed herewith is a Statement of Reasons prepared by the Screening Board.

You may reply to this Statement or Reasons in writing, under oath or affirmation, and may submit such statements or affidavits by third parties or other documentary evidence as you may desire.

In addition, you have the right to appear, at your request, before a Hearing Board in person and/or by Counsel or representative of your own choosing and to present evidence in your behalf including testimony of witnesses. When you submit your reply to the Statement of Reasons, it will be necessary for you to state your choice between these two methods of having your case determined. If you do not request a hearing, it will be considered that you have chosen to have your case determined without a hearing. In that event, your case will be determined upon the basis of the complete file, including your reply to the Statement of Reasons and any additional written material submitted in support of your reply.

You are advised that your clearance will be denied or revoked finally without further action unless, within ten (10) calendar days after you have received this communication, you submit the written material hereinbefore described, request a hearing, or request additional time in which to answer. Your response to this letter should be addressed to the Director, Office of Industrial Personnel Security Review, Pentagon, Washington 25, D. C.

For your information and guidance, there is enclosed herewith a copy of the aforementioned Directive establishing this Office and its constituent Boards, and the standard, criteria, and procedures by which they are governed.

Very truly yours,

Jerome D. Fenton

Jerome D. Fenton
Director
Office of Industrial Personnel Security Review

3 Incls.
1. Statement of Reasons
2. Notice Suspension of Clearance
3. DOD Dir 5220.6, 2/2/55

B10423

[fol. 39]

NAME: TAYLOR, Charles Allen
DOB: 7 September 1905
POB: Hamilton, Ohio
Case No. OSD 56-198

STATEMENT OF REASONS

(All criteria listed below refer to subparagraphs under Section III, paragraph 13a, Department of Defense Directive No. 5220.6, dated 2 February 1955)

1. Criterion (4):

a. Information before this Board indicates that you have had, and may still have, membership in the Communist Party. This information is:

(1) In 1942 and 1943, for a period of about 18 months, and perhaps for a longer period, you were a member of the Communist Party, and during all or a part of

that period, or perhaps for a longer time, you held Communist Party membership book (or card) No. 3060, evidencing your membership in the Communist Party. (The Communist Party has been designated by the Attorney General of the United States, pursuant to Executive Order No. 10450, as having interests in conflict with those of the United States.)

(2) By a Communist Party transfer card dated on or about 15 July 1943, you were transferred from "Branch B and C" of the Communist Party to "Branch 12" of the Communist Party; and on said transfer card it was indicated that your dues had been paid to and including April 1943.

(3) During a period of about 18 months in 1942 and 1943, and perhaps during other years and for a longer period, you paid regular membership dues to the Communist Party.

b. Information before this Board indicates that at the time of your membership in the Communist Party, as aforesaid, you knew of the character, aims and purposes of said organization, or had reason to know and should have known thereof; and that you were, and may still be, in sympathy with and in support of such aims and purposes. This information is:

(1) In 1941 and 1942, while residing in Buffalo, New York, or thereabouts, you signed Independent Nominating Petitions for the Communist Party, thus signifying a preference for Communist Party candidates in New York State elections.

[fol. 46] (2) That contained in subparagraphs a(2) and a(3), or paragraph 1.

2. Criterion (10): Information before this Board indicates that you have a sympathetic interest in Communism. This information is that contained in paragraph 1, preceding.

3. Criterion (16): In a Personnel Security Questionnaire signed by you and dated 8 September 1954, and delivered to the Bell Aircraft Corporation, Buffalo, New York, you failed to list the Communist Party in Item 26 thereof which

reads "Organizational Membership (List all organizations except labor unions in which you hold or have held membership)", and you indicated "None"; and you certified that the entries made by you in said Questionnaire were true, complete and correct to the best of your knowledge and belief, and were made in good faith. In an attachment to your Personnel Security Questionnaire dated 2 July 1956, Form DD 48-1 "Certificate of Non-Affiliation With Certain Organizations", also dated 2 July 1956 and signed by you, you answered in the negative the questions pertaining to whether you had ever been a member of, or had ever affiliated or associated with, any of the organizations listed in paragraph II, which said paragraph lists as the first item "Communist Party, USA., its subdivisions, subsidiaries and affiliates". In view of the information set forth in paragraph 1 herein, it appears that by such omissions of material facts and by such negative answers, you deliberately misrepresented that which you were required to disclose, to wit, that you were or had been a member of the Communist Party.

4. Criterion (20): Information before this Board furnishes reason to believe that you may be subject to coercion, influence or pressure which may cause you to act contrary to the best interests of the national security. This information is that contained in paragraphs 1, 2 and 3, preceding.

[fol. 41]

EXHIBIT NO. 8 TO STIPULATION OF FACTS

TELEPHONE
NIAGARA FALLS—7851

OFFICES AND FACTORY
NIAGARA FALLS AIRPORT

BELL Aircraft Corporation
Post Office Box One Buffalo 5, New York

September 11, 1956

Mr. Charles A. Taylor
131 Rodney Avenue
Buffalo 14, New York

Dear Mr. Taylor:

This is to notify you that we have received from the Office of Industrial Personnel Security Review, a letter of denial

to access to any classified information effective immediately. You are hereby advised that we are no longer able to retain you in the employ of this company. Therefore your employment is terminated as of this date.

Yours very truly,

BELL AIRCRAFT CORPORATION

Arthur H. Connelly,

Arthur H. Connelly,
Manager of Labor Relations

/jhh
cc: E. Carry, Manager of Security Operations

[fol. 42]

EXHIBIT NO. 9 TO STIPULATION OF FACTS

LAW OFFICE
OF
LIPSITZ AND GREEN
FOURTH FLOOR
35 COURT STREET
BUFFALO 2, NEW YORK

WA. 8231

RICHARD LIPSITZ
CARL A. GREEN

October 9, 1956

DAVID S. REISMAN

Office of Industrial Personnel Security Board
Pentagon Building
Washington 25, D. C.

Re: CHARLES ALLEN TAYLOR
OSD 56-198

Gentlemen:

I am enclosing herewith the affidavit of the above named person in reply to your Statement of Reasons.

I am again asking for a hearing in person as contained in my letter to you dated September 28, 1956.

May I also request the hearing to be held at the earliest possible date.

Very truly yours,

LIPSITZ & GREEN

/s/ Richard Lipsitz

By: RICHARD LIPSITZ

RL:gb
Encl.

[fol. 43] AFFIDAVIT OF CHARLES ALLEN TAYLOR IN REPLY TO STATEMENT OF REASONS, CASE # OSD 56-198 ACCOMPANYING NOTICE OF SUSPENSION OF CLEARANCE DATED SEPTEMBER 6, 1956.

STATE OF NEW YORK:
COUNTY OF ERIE : SS.
CITY OF BUFFALO :

CHARLES ALLEN TAYLOR, being duly sworn, deposes and says:

1. That he resides at 269 Wheatfield Street, North Tonawanda, New York and until recently was employed at Bell Aircraft Corporation at Wheatfield, New York, having been terminated from employment in that company as of September 11, 1956.

2. That he has read the Statement of Reasons and points out to your Board that although his date of birth is correctly stated that his place of birth is incorrectly stated and that he was born in Gray County, Province of Ontario, Canada.

3. That following herewith are his replies to the various sections of the Statement of Reasons, the reply bearing the corresponding number with the number on the Statement of Reasons:

1. a. (1) Your deponent denies that he ever was a member of the Communist Party during 1942 and 1943 or at any time either before or after that date. Your deponent has

no knowledge of any so-called Communist Party membership book (or card) bearing #3060, or bearing any other number or identification evidencing his membership in the Communist Party. He has never seen any such membership book or card nor has he ever been informed or advised until your Statements of Reasons that one is alleged to be or have been in existence.

(2) Your deponent has no knowledge of a Communist Party transfer card dated on or about 15 July 1943, or dated any date, nor does he know what a Communist Party transfer card is nor has he ever seen or heard of the same until [fol. 44] your Statement of Reasons. Your deponent has no knowledge or information about any "Branch B and C" or "Branch 12" of the Communist Party, nor of any "Branch" and he has never heard of the same until your Statement of Reasons. It is claimed that the said transfer card indicated your deponent's dues had been paid to and including April, 1943. Although you do not recite from what date it was claimed these dues were paid, your deponent, nevertheless, states that he has never knowingly paid dues to the Communist Party or to any of its organizations. The Statement of Reasons is the first time it has ever been brought to your deponent's attention that any claim has ever been made that he has paid dues to the Communist Party or any of its organizations.

(3) Your deponent denies that at any time has he ever knowingly paid membership dues to the Communist Party and states that your Statement of Reasons is the first time in which he has ever been advised of any such claim.

b. Your deponent is unable fully to answer this allegation for the reason that the so-called character, aims and purposes of the Communist Party are not set forth herein and it is not known to your deponent actually what it is in the character, aims and purposes that he is alleged to have known of or to have reason to and should have known of. It is for this reason therefore, that your deponent is handicapped and unable fully to comment on what alleged aims and purposes he is claimed to have been in sympathy with and in support of. If it is claimed, as your deponent now assumes, that the Communist Party is an organization de-

voted to the overthrow of the government and constitution of the United States by force, violence or other unlawful or constitutional means, then your deponent states clearly and unequivocally that he has never been in sympathy with or in support of such aims or purposes, nor is he at the present time. Your deponent does not deny that he may have concurred in certain points of view in connection with activities [fol. 45] in his local union, Local 501, UAW-CIO, which may have been by coincidence similar to or close to the points of view of those claimed to be held by the Communist Party and concerning which he will more fully and completely testify at his hearing. For instance, your deponent at all times has been and is now opposed to discrimination in employment based upon color, race, creed or union activities and your deponent understands that this is claimed to be one of the aims of the Communist Party.

(1) Your deponent cannot deny that he may have signed one or more Independent Nominating Petitions for the Communist Party in 1941 or 1942, nor can he nor does he affirm he has done the same. Your deponent's recollection is that he may have signed nominating petitions during those said years, that they may have been for the American Labor Party, or that they may have been for other candidates not belonging to the recognized political parties on the ballot in the State of New York. If your deponent's signature appears upon one or more Independent Nominating Petitions for the Communist Party, your deponent denies that he signed the same knowing that they were petitions for candidates of the Communist Party. Furthermore, in an effort to verify or deny this part of the Statement of Reasons, your deponent has through his attorney communicated with the Erie County Board of Elections within which County he resided during the years 1941 and 1942 and has been advised that all Independent Nominating Petitions, whether for the Communist Party or any other party or group are destroyed within one year after the election for which they have been submitted.

(2) Your deponent's answer is contained above.

2. This has in part been answered above but, in addition, your deponent states that he is again unable fully to answer

this particular allegation since it is not explained in the Statement of Reasons what is meant by sympathetic interest [fol. 46] in communism. If, however, it is understood to be what your deponent has recited above as his understanding of what you intent it to mean he denies of course, that he ever has had or now has such an interest in the Communist Party. Your deponent notes that in this paragraph it is claimed that he has had a sympathetic interest in "Communism" and again is somewhat handicapped in answering since Criterion (10) refers to a sympathetic interest in "Communist . . . movements" while you state an interest in "Communism." It is not known whether you intended any distinction.

3. Since your deponent never was a member of the Communist Party your deponent denies that he improperly failed to list the Communist Party in his 1954 Personnel Security Questionnaire. Similarly, your deponent denies that in the July 1956 forms referred to that his answer should have included the Communist Party as an organization in which he had been a member or had ever been affiliated with or associated with and further denies that he ever deliberately misrepresented any answer or fact in those said forms.

4. Your deponent denies that he is now or ever was subject to coercion, influence or pressure which may cause him to act contrary to the best interests of national security. In elaborating on this, your deponent states that he is now and always has been sincerely devoted to the aims and principals of the United States of America and to its form of government as contained in the Constitution and Bill of Rights of the United States government. Your deponent does not know what alleged coercion, influence or pressure is referred to unless it is the alleged membership, which is again denied.

/s/ Charles Allen Taylor

Sworn to before me this
9th day of October, 1956.

/s/ Richard Lipsitz

[fol. 47]

EXHIBIT NO. 10 TO STIPULATION OF FACTS

TLW/al
15 October 1956

Mr. Charles Ailen Taylor
269 Wheatfield
North Tonawanda, New York

REGISTERED
RETURN RECEIPT REQUESTED
DELIVER TO ADDRESSES ONLY

Dear Sir:

The Director, Office of Industrial Personnel Security Review, has referred to this Board your request for a hearing in the matter of your clearance for access to classified defense information at Bell Aircraft Corporation, Post Office Box 1, Buffalo, New York.

Accordingly, a hearing has been scheduled for you before this Board as follows:

TUESDAY, OCTOBER 30, 1956 AT 9:30 A.M.
45 Broadway, New York 6, N. Y.—Room 702

Prior to the date of the scheduled hearing any further answer to the Statement of Reasons submitted to you by the Director, or any additional statements, affidavits or other documentary material you may care to file should be submitted directly to the Executive Secretary of this Board.

At the time of your hearing you may appear personally with counsel and witnesses and present evidence, documentary or otherwise, in your behalf. The Government cannot pay witness fees or reimbursement for travel or other expenses.

To assist the Board in completing arrangements for the hearing it is necessary that you reply in writing to the Executive Secretary within forty-eight (48) hours of the receipt of this communication indicating whether or not you will appear at the time of the scheduled hearing. In addition, the Board would appreciate an estimate of the number of hours you consider necessary for the presentation of your appeal and the approximate number of witnesses, if any, you contemplate bringing before the Board. This esti-

mate is merely for the Board's use for scheduling purposes and will not serve to limit the time made available to you or otherwise prejudice your opportunity for a full and complete hearing.

Any oral or written request for postponement must be for good and sufficient reason and be received at this office prior to forty-eight (48) hours before the scheduled hearing. A postponement will not be granted within the forty-eight (48) hour period prior to the scheduled hearing, in the absence of exceptionally justifiable cause.

If you fail to appear at the time of the scheduled hearing and you do not furnish a satisfactory explanation for your failure to appear, no further action will be taken by this Board, and the Complete file in your case will be returned to the Director, Office of Industrial Personnel Security Review.

Yours very truly,

T. L. White
Executive Secretary

cc: Richard Lipsitz, Esq.
35 Court St., Buffalo,
New York

[fol. 48] EXHIBIT NO. 11 TO STIPULATION OF FACTS

OCT 1956

LAW OFFICE
OF
LIPSITZ AND GREEN
FOURTH FLOOR
35 COURT STREET
BUFFALO 2, NEW YORK

RICHARD LIPSITZ
CARL A. GREEN

October 18, 1956

DAVID E. REISMAN

New York Industrial Personnel Security Hearing Board
45 Broadway
New York 6, New York

Re: Charles A. Taylor
OSD 56-198

Gentlemen:

This will acknowledge receipt of your letter of October 17, 1956 and the previous one, undated, setting the date for the hearing in the above matter for November 1, 1956.

Kindly be advised that both my client and the undersigned, together with a number of witnesses will be present at that time.

In view of the number of witnesses, which I approximate to be 10, and in view of the nature of the problems involved, I estimate that it will take the better part of two days to present our case.

I am also enclosing herewith a demand upon your Board to produce certain matters in connection with this hearing.

Very truly yours,

LIPSITZ & GREEN

/s/ Richard Lipsitz

By: RICHARD LIPSITZ

Encl.
RL:gb

[fol 49]

EXHIBIT NO. 12 TO STIPULATION OF FACTS

IN THE MATTER OF

The Hearing of the Appeal of CHARLES ALLEN TAYLOR to the New York Industrial Personnel Security Hearing Board

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NOTICE TO PRODUCE

You are hereby notified that the undersigned, on behalf of Charles Allen Taylor, hereby demands that you produce the following at the hearing to be conducted by the New York Industrial Personnel Security Hearing Board:

1. All written information either in your possession or in the possession of the Screening Board which has been or will be used by your Board in arriving at its determinations in support of the Statement of Reasons Paragraphs 1a (1), (2), (3), 1b (1) and 3.

2. The names and addresses of all witnesses whose statements either written or oral, have been or will be used in connection with the same.

3. The original or a true copy of the Personnel Security Questionnaire referred to in Paragraph 3 and dated 8 September, 1954 and also the one referred to as the attachment to Personnel Security Questionnaire dated 2 July, 1956.

4. If the information referred to in Paragraphs 1a and b is not in writing, or will not be presented by any witnesses testifying in person, a written statement from your Board setting forth in detail the information referred to in those Paragraphs, to wit: 1a (1), (2), (3), and 1b and the source of such information, that is the name or names of the person supplying the same and their addresses.

5. The original or if the same is not in your possession a true copy of the so-called Communist Party membership book or card #3060 referred to in Paragraph 1a (1).

[fol. 50] 6. The original or if you do not have the same in your possession a true copy of the so-called Communist Party transfer card referred to in Paragraph 1a (2).

7. A statement of the amount of membership dues paid and the date or dates on which the same were paid as referred to in Paragraph 1a (3), together with the names and addresses of the persons supplying such information, and a statement of the source of such information.

8. The originals or if you do not have the same in your possession true copies of the so-called Independent Nominating Petitions of the Communist Party referred to in Paragraph 1b (1). If you do not have the originals or copies, a statement including the names and addresses of all persons supplying information pertaining to this together with the source of such information.

9. If any of the information referred to in Paragraphs 2 and 4 is not contained as alleged therein in other Paragraphs, a written statement of what such additional information is claimed to be and the names and addresses of all witnesses whose statements written or oral have been or will be used in connection with the same.

This information is necessary in order to afford said Charles Allen Taylor an opportunity for a fair hearing provided for under Section 1, paragraph 3-A of the Department of Defense Directive, entitled Industrial Personnel Security Review Regulation—#5220.6 and furthermore, in order to conform to the policies and requirements set forth in the Administrative Procedures Act 5 USC 1001-1011.

LIPSITZ & GREEN
35 Court Street
Buffalo 2, New York
Attorneys for
Charles Allen Taylor

Buffalo, New York
October 18, 1956

[fol. 51]

EXHIBIT No. 13 TO STIPULATION OF FACTS

OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON 25, D. C.

JUN 13 1957

Bell Aircraft Corporation
Post Office Box No. 1
Buffalo 5, New York

ATTN: Security Officer

Gentlemen:

Reference is made to the letter from this Office dated September 6, 1956, in which you were informed that the Industrial Personnel Security Screening Board had determined that any existing security clearance of Charles Allen Taylor, an employee of your company, should be suspended pending further processing.

After considering all the available information, a final determination has now been made that the granting of clearance to Mr. Taylor for access to classified defense information is not clearly consistent with the interests of national security.

You are informed that, although your facility may be performing classified work for the Defense Department, the decision in this case is not intended to prevent the employee from performing such non-classified work as your facility may have available for him.

Very truly yours,

A. Tyler Port
Director
Office of Industrial Personnel Security Review

[fol. 52] EXHIBIT NO. 14 TO STIPULATION OF FACTS

OFFICE OF THE SECRETARY OF DEFENSE
Washington 25, D. C.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
DELIVER TO ADDRESSEE ONLY

Jun 14 1957

Mr. Charles A. Taylor
269 Wheatfield Street
North Tonawanda, New York

Dear Mr. Taylor:

Pursuant to the provisions of the Department of Defense Industrial Personnel Security Review Regulation, this Office has considered the matter of your clearance for access to classified defense information at Bell Aircraft Corporation, Buffalo, New York.

By letter dated September 10, 1956, you were informed that the Industrial Personnel Security Screening Board had determined that a favorable security finding was not warranted. You were also forwarded a Statement of Reasons prepared by the Screening Board.

After affording you a hearing on November 1, 2 and 14, 1956, a determination has been reached that, on the available information, the granting of clearance to you for access to classified defense information is not clearly consistent with the interests of national security.

In reaching this determination, the facts alleged in the Statement of Reasons, and the conclusions drawn therefrom, except as to signing the nominating petitions, were true as stated.

By separate letter, I have informed your attorneys of record, Messrs. Lipsitz and Green, of the decision.

Very truly yours,

/s/ A. Tyler Port

A. Tyler Port
Director
Office of Industrial Personnel Security Review

[fol. 53]

EXHIBIT NO. 15 TO STIPULATION OF FACTS

November 22, 1957

Hon. Neil McElroy
Secretary of Defense
Pentagon
Washington 25, D. C.

Dear Mr. Secretary:

This is a request on behalf of Charles Allen Taylor for the exercise of your authority, recognized in Section 22 c (3) of the Department of Defense Industrial Personnel Security Review Regulations, to reverse a determination under the Industrial Personnel Security Program denying access to classified defense information. By letter of June 13, 1957, A. Tyler Port, Director of Industrial Personnel Security Review, advised Mr. Taylor of the determination denying him access to classified information and it is that determination you are requested to reverse.

In Mr. Port's letter of June 13th, Mr. Taylor was advised that, after the hearing before the New York Industrial Personnel Security Hearing Board, it was determined that "the granting of clearance to Mr. Taylor for access to classified defense information is not clearly consistent with the interests of National security." This determination against Mr. Taylor was based on allegations that some fourteen or fifteen years ago, in 1942 and 1943, Mr. Taylor was a member of the Communist Party; held Communist Party membership book (or card) No. 3060; paid regular membership dues to the Communist Party; and that a Communist Party transfer card dated on or about 15 July, 1943 indicated his transfer from Branch C to Branch 12 or the Communist Party.

Your Department presented no evidence of any kind at the hearing in support of its charges against Mr. Taylor. It denied Mr. Taylor's request that, in order to make his defense, he be permitted to examine the written information and materials against him and be given the names of the person or persons upon whose statements the charges were based.

Since Mr. Taylor was denied any opportunity to be confronted with or examine the "evidence" against him and thus to rebut that "evidence", he could do no more than to prove through his own testimony and that of other witnesses that the charge of long-past Communist membership was utterly false. This he did. Mr. Taylor denied [fol. 54] under oath the pertinent charges against him, and categorically asserted that he had never been a member of, paid dues to, held a membership card in, or associated in any way with the Communist Party of the United States. Mr. Taylor produced numerous witnesses who knew him in 1942 and 1943 and thereafter, who testified that Mr. Taylor was always known to them and to others to be an anti-Communist and completely loyal to the United States. Among these witnesses was the leader of the anti-Communist faction in Mr. Taylor's local union in 1942 and 1943, who had succeeded in ousting the Communist leader of the local, and another witness who referred to himself as "king of the Red-baiters" in the local union. It was pointed out that Mr. Taylor may have been erroneously accused as the result of confusion with one Alvin Taylor, generally considered a Communist member of the local union.

The witnesses were unanimous, forthright and unequivocal in their defense of Mr. Taylor.

Mr. Taylor's son, Eugene Taylor, testified that during the period in question and thereafter, his father never discussed Communism or the Communist Party, had no Communist books or literature in the house, and had no Communist associates.

Joseph Rosmyslowski testified that in the period in question Mr. Taylor openly opposed and became bitter enemies with Allie Brodose, the Communist leader of the local union; that on one occasion he had heard an angry argument between Mr. Taylor and Allie Brodose in which Mr. Taylor repeatedly referred to Brodose as "Red." He testified that it was the attitude of the active union people that Mr. Taylor was "an independent thinker, and that he was not a Communist. Now or ever."

John Paul Maturski, who defeated Allie Brodose for the presidency of the local union in 1943 on an anti-Communist

platform to depose Communist leaders of the union, testified for Mr. Taylor. He stated that Mr. Taylor stood with him publicly on many issues in opposition to the Communist Program urged by Brodose, and as concerning any allegation that Mr. Taylor was a Communist during the period in question, "Nobody ever accused him . . . I always understood him to be a good trade union man." He testified that he had known Mr. Taylor for about sixteen years and that he had never heard him designated as a Communist.

[fol. 55] Gilbert McGovern, by his own admission the most notorious Red-baiter in Mr. Taylor's local union, testified that he had never considered Mr. Taylor to be a Communist or a Communist sympathizer, was shocked when he heard of the charges against Mr. Taylor, and volunteered his testimony because "I think that's wrong. I think they have got him confused with Alvin Taylor who substituted for Allie Brodose when Allie Brodose was exposed as being the head of the Communist Party in Bell Aircraft."

Wilbert Rowe testified that he had known Mr. Taylor since 1941 and associated with him in local union politics, and as far as considering Mr. Taylor a Communist, "it wasn't a case of considering, it was a case of knowing. I knew at all times that Charlie Taylor was never a member." He testified concerning the many issues promoted by the Communists in the union in accordance with the Party policy of the time, upon which Mr. Taylor was in strong and open opposition to the Communists. Mr. Rowe testified, "I know he was against them to the extent that I'm here in his behalf, because if I even thought for a second that he was a Communist, I'd be in the plant telling the people 'I hope he doesn't get back.'"

Leon Meyers testified that he had worked in the plant with Mr. Taylor since 1940. He recalled an incident late in 1942 or early in 1943 when Mr. Taylor had warned him about associating with Allie Brodose because "You know he's a 'Commie.'" Meyers stated, "I never heard anyone accuse Charlie (Mr. Taylor) of being a Communist at any time."

Harold Mear testified that he had worked in the same section, and had daily contact, with Mr. Taylor since 1942; that he had never heard him talk favorably about Communism, had never heard anyone mention that Mr. Taylor was a follower of the Communist Party line, that in his opinion Mr. Taylor was a loyal American citizen and that he had the reputation of being a loyal American citizen. He related specific issues upon which Mr. Taylor publicly attacked the position taken by the Communists during the years in question.

William Wagner, who testified he has known Mr. Taylor for approximately fifteen years, attested to Mr. Taylor's public opposition to the Communists on various issues; that during the years in question he definitely did not have a reputation for being pro-Communist or being sympathetic toward Communism; and that he had no reservations about his being a loyal American.

[fol. 56] Robert Meredith, employed at the same plant with Mr. Taylor since 1942, testified to Taylor's opposition to the Communists in the union and his good reputation.

Robert Siegeler testified that he had been a Bell employee since 1940; that during 1946 and 1947 he carried on an active campaign to defeat the pro-Communist leadership of the UAW, and that Mr. Taylor was one of his staunch supporters in that compaign.

Thomas H. Smith, who has worked with and known Mr. Taylor since 1941, testified as follows. ". . . If Russia or any foreign country invaded this country. Taylor would be the first guy to get shot fighting them. That's the kind of guy he is to me . . . He's a real, 100 per cent American."

Any fair reading of the record of the hearing will demonstrate that Mr. Taylor's interests and activities, his friends and associates, his general reputation in the union, his position on local union matters and his vocal opposition to the prevailing program of the Communists during the relevant period, were all anti-Communist. *The allegations against him were either wilfully false or a case of mistaken identity. In either event, for the Defense Department to*

accept an unknown informer's word against those of Taylor and eleven other witnesses is to find guilt by mere accusation.

The denial of clearance to Mr. Taylor deprives a loyal American with a life-time record of good conduct and anti-Communism of the opportunity to earn a living at his trade because of false, baseless and unfounded allegations by faceless informants and secret evidence not subject to examination or rebuttal. To apply the non-confrontation policy of your regulations to Mr. Taylor, and then to deny him clearance despite the unequivocal record of anti-Communism made at his hearing, not only deprives him of the most fundamental rights of fair hearing, fair treatment, and due process, but perpetrates a gross injustice by denying Mr. Taylor his right to a livelihood arbitrarily and unreasonably and without any cause whatever.

By virtue of the unjustified denial of security clearance for Mr. Taylor he has been unemployed for quite some time. It is requested that you make your determination as promptly as possible.

Respectfully submitted,

.....
Joseph L. Rauh, Jr.

.....
John Silard

CC: Harold A. Cranefield
Richard Lipsitz
Walter Pol
Charles Allen Taylor
A. Tyler Port

[fol. 57]

EXHIBIT NO. 16 TO STIPULATION OF FACTS

WP 0 13 LONG PD=WASHINGTON DC 23 34 1PME=
=HON NEIL MCELROY, SECY OF DEFENSE=
PENTAGON=

=CHARLES ALLEN TAYLOR, AMERICAN CITIZEN AND FORMER EMPLOYEE OF BELL AIRCRAFT, IS UNEMPLOYED BECAUSE OF HIS ARBITRARY AND ILLEGAL DENIAL OF SECURITY CLEARANCE BY YOUR DEPARTMENT. OUR LETTER OF NOVEMBER 22 1957 TO YOU, DETAILING THE INCREDIBLE INJUSTICE OF HIS CASE, HAS NOT BEEN ANSWERED AND INFORMAL CONVERSATIONS WITH MEMBERS OF YOUR DEPARTMENT HAVE FAILED TO PRODUCE AN ANSWER. WE REQUEST AN IMMEDIATE RESPONSE FROM YOU AS TO WHEN WE MAY HAVE AN ANSWER TO OUR LETTER OF NOVEMBER 22ND=

JOSEPH L RAUH JR AND JOHN SILARD

[fol. 58]

EXHIBIT NO. 17 TO STIPULATION OF FACTS

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON 25, D. C.

Feb. 3, 1958

Re: Charles Allen Taylor

Dear Mr. Rauh:

Reference is made to your letter to the Secretary of Defense requesting reversal of the decision to deny security clearance to your client, Mr. Charles Allen Taylor. Reference is also made to your wire requesting a reply to your earlier letter, and to the intervening telephone calls with members of my staff who have advised you or other members of your office that your request was under active consideration and that formal reply to your request would be made as soon as practicable.

In consequence of your request, the case has been reviewed. The record reflects that the determination was reached after giving careful and deliberate consideration to all the evidence. The conclusion reached from this review is that the adverse determination is neither arbitrary nor capricious but is, on the contrary, reasonably supported.

However, although it does not appear that the adverse determination should be reversed on the basis of the present record, yet it is believed appropriate in this instance to reopen the case and obtain any additional information that may be available. For this purpose, a further investigation has been instituted and it is expected that further proceedings will be conducted.

It is estimated that the pending investigation will be completed in about two or three weeks, after which you will receive further word.

Very truly yours,

Robert Dechert

Joseph L. Rauh, Jr., Esq.
Rauh & Levy
1631 K Street, N.W.
Washington 6, D.C.

[fol. 59]

EXHIBIT NO. 18 TO STATEMENT OF FACTS

May 30 1958

Re: Charles Allen Taylor

Dear Mr. Rauh:

Reference is made to previous communications from the General Counsel of the Department of Defense and from members of the General Counsel's Office in connection with your request for the reversal, under paragraph 22c(3) of the Industrial Personnel Security Review Regulation (Department of Defense Directive 5220.6, dated February 2, 1955), of the determination announced by the Director, Office of Industrial Personnel Security Review, under date

of June 14, 1957, that the granting of clearance to your client, Mr. Charles Allen Taylor, for access to classified defense information was not clearly consistent with the interests of the national security.

As you were previously informed, Mr. Taylor's case was placed under review and additional investigation was instituted. These proceedings have now advanced to the point where it is possible to reach a definitive conclusion. This conclusion is that although, as previously stated, the adverse determination was neither arbitrary nor capricious but was, on the contrary, reasonably supported, nevertheless it is appropriate in this instance to conduct further proceedings.

Accordingly, the announced adverse decision in Mr. Taylor's case has been set aside, and further proceedings consistent with the aforementioned Review Regulation shall be conducted.

The case is being returned to the New York Industrial Personnel Security Hearing Board for further proceedings. That Board will communicate with you in the near future.

By Direction of the Secretary of Defense

Robert Dechert

Joseph L. Rauh, Jr., Esq.
Rauh & Levy
1631 K Street, N. W.
Washington 6, D. C.

[fol. 60]

EXHIBIT NO. 19 TO STATEMENT OF FACTS

JUN 6 1958 ga

LAW OFFICES
RAUH AND LEVY
1631 K STREET, NORTHWEST
WASHINGTON 6, D. C.

JOSEPH L. RAUH, JR.
DANIEL H. POLLITT
JOHN SILARD

REPUBLIC 7-7795

June 5, 1958

New York Industrial Personnel
Security Hearing Board
45 Broadway
New York 6, New York

Gentlemen:

This morning we received a letter dated May 30, 1958 from Robert Dechert, General Counsel of the Department of Defense, concerning the case of Charles Allen Taylor. A copy of this letter is enclosed and your attention is particularly invited to the statement therein that "the case is being returned to the New York Industrial Personnel Security Hearing Board for further proceedings."

This letter is for the purpose of urging maximum speed in such "further proceedings." As you undoubtedly know, Mr. Taylor's employment was terminated on September 11, 1956 as the result of the suspension of his clearance for access to classified defense information. On June 14, 1957, Mr. Taylor was advised by letter from the Director of the Office of Industrial Personnel Security Review that access on his part to classified information "is not clearly consistent with the interests of national security." On November 22, 1957, Mr. Taylor wrote Secretary of Defense McElroy detailing the clear evidence of the falsity of the charges against him and requesting a reversal of the deci-

sion denying him clearance. Over five months thereafter, and no action having been taken in that period, Mr. Taylor brought suit on April 24, 1958 against Secretary McElroy and Director Port, challenging the validity of the action against him. Six weeks after the suit was commenced, and more than six months after Mr. Taylor's appeal to Secretary of Defense McElroy, we received the enclosed equivocal communication.

Mr. Taylor has now been out of his lifetime job at Bell Aircraft for almost two years as a result of the pending proceedings. Certainly it would only seem fair that any "further proceedings" be taken at once. We request the favor of a prompt response to this letter telling us exactly what the next step is to be.

Sincerely yours,

Joseph L. Rauh, Jr.

Enclosure

[fol. 61]

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
Washington 25, D. C.

May 30, 1958

Re: Charles Allen Taylor

Dear Mr. Rauh:

Reference is made to previous communications from the General Counsel of the Department of Defense and from members of the General Counsel's Office in connection with your reques for the reversal, under paragraph 22c(3) of the Industrial Personnel Security Review Regulation (Department of Defense Directive 5220.6, dated February 2, 1955), of the determination announced by the Director, Office of Industrial Personnel Security Review, under date of June 14, 1957, that the granting of clearance to your client, Mr. Charles Allen Taylor, for access to classified defense information was not clearly consistent with the interests of the national security.

As you were previously informed, Mr. Taylor's case was placed under review and additional investigation was in-

stituted. These proceedings have now advanced to the point where it is possible to reach a definitive conclusion. This conclusion is that although, as previously stated, the adverse determination was neither arbitrary nor capricious but was, on the contrary, reasonably supported, nevertheless it is appropriate in this instance to conduct further proceedings.

Accordingly, the announced adverse decision in Mr. Taylor's case has been set aside, and further proceedings consistent with the aforementioned Review Regulation shall be conducted.

The case is being returned to the New York Industrial Personnel Security Hearing Board for further proceedings. That Board will communicate with you in the near future.

By Direction of the Secretary of Defense

/s/ ROBERT DECHERT

Joseph L. Rauh, Jr., Esq.
Rauh & Levy
1631 K Street, N.W.
Washington 6, D. C.

[fol. 62]

EXHIBIT NO. 20 TO STIPULATION OF FACTS

TLW/al

WHITEHALL 3-8000 EX 75

June 6, 1958

Joseph L. Rauh, Jr., Esq.
1631 K Street, Northwest
Washington 6, D. C.

REGISTERED
RETURN RECEIPT REQUESTED

Dear Sir:

In response to your letter of June 5, 1958 concerning the case of CHARLES ALLEN TAYLOR please be advised that if and when the file in this case is received by this Board with instructions from the Director, Office of Industrial Per-

sonnel Security Review, that a hearing be conducted such hearing will be scheduled for the first available date.

Yours very truly,

T. L. WHITE
Executive Secretary

[fol. 63]

EXHIBIT NO. 21 TO STIPULATION OF FACTS

LAW OFFICES
RAUH AND LEVY
1631 K STREET, NORTHWEST
WASHINGTON 6, D. C.

June 10, 1958

JOSEPH L. RAUH, JR.
DANIEL H. POLLITT
JOHN SILARD

REPUBLIC 7-7795

Robert Dechert, Esq.
General Counsel of the
Department of Defense
Washington 25, D. C.

Re: Charles Allen Taylor

Dear Mr. Dechert:

On June 5, we received a letter from you dated May 30, 1958, concerning the case of Charles Allen Taylor. In that letter you stated that "the case is being returned to the New York Industrial Personnel Security Hearing Board for further proceedings." On the same day, we wrote the New York Industrial Security Hearing Board seeking to expedite these "further proceedings." In view of your letter, we were quite surprised to receive the enclosed letter from the New York Board indicating that that Board had not even heard from you.

In view of the fact that the New York Board is unable to tell us what these "further proceedings" will be and in

view of the pending litigation, we request a statement from your office as to what these "proceedings" will be.

Sincerely yours,

Joseph L. Rauh, Jr.

Enclosure

CC: Mr. T. L. White
Harold A. Cranefield, Esq.
Mr. Charles A. Taylor
Mr. Victor Reuther
Mr. A. Tyler Port
Richard Lipsitz, Esq.
Mr. Walter Pol

[fol. 64]

EXHIBIT NO. 22 TO STIPULATION OF FACTS

JUN 16 1958

Dear Mr. Rauh:

In your letter of June 10, 1958 you requested a description of the "further proceedings" which will be conducted in the case of your client, Mr. Charles Allen Taylor, as a result of the action of the Secretary of Defense of which you were advised in the letter to you dated May 30, 1958.

The further proceedings which are contemplated in this case are those which normally pertain to a case which is referred by the Director of the Industrial Personnel Security Review Program to an Industrial Personnel Security Hearing Board for consideration and determination under the Industrial Personnel Security Review Regulation. In this instance, the New York Industrial Personnel Security Hearing Board will have before it all of the information which has been developed before, during, and after the previous hearing conducted in the case.

Just as the Hearing Board will have full jurisdiction of the case, Mr. Taylor will be possessed of all of the rights and privileges of any Respondent whose security case is pending before a Hearing Board under the Review Program.

Under date of June 16, 1958, the Director of the Industrial Personnel Security Review Program referred Mr. Tay-

lor's case to the New York Industrial Personnel Security Hearing Board for the further proceedings described above. Accordingly, you should expect to hear directly from that Board in the very near future.

Very truly yours,

Robert Dechert

Joseph L. Rauh, Jr., Esquire
Rauh & Levy
1631 K Street, N.W.
Washington 6, D.C.

cc: Mr. Dechert
Mr. Bartimo
Mr. MacClain

[fol. 65]

EXHIBIT NO. 23 TO STIPULATION OF FACTS

ga

June 19, 1958

Mr. Charles Allen Taylor
269 Wheatfield Street
North Tonawanda, New York

REGISTERED
RETURN RECEIPT REQUESTED
DELIVER TO ADDRESSEE ONLY

Dear Mr. Taylor:

In accordance with information previousiy furnished to your counsel of record, Mr. Joseph L. Rauh, Jr., your security case was returned to this Hearing Board for further proceedings consistent with the Industrial Personnel Security Review Regulation (Department of Defense Directive 5220.6), a copy of which is enclosed for your reply reference.

The Hearing Board has examined and considered all of the information now available to it, including that which was developed before, during and after your previous hearing conducted by this Hearing Board. As a result of its study, the Hearing Board has determined that the Statement of Reasons previously issued to you should be, and accordingly it has been, amended to conform it to the infor-

mation now available. The Amended Statement of Reasons which the Hearing Board has prepared is enclosed herewith.

The following alternative courses of action are now available to you. You may have a live hearing on the Amended Statement of Reasons before this Hearing Board if you so desire and request. In lieu thereof, you may have your case decided without a hearing upon the basis of the complete file, including your reply to the Amended Statement of Reasons and any additional written material submitted in support of your reply.

In order for you to exercise either of these alternative rights, it will be necessary for you to furnish a written reply to the Amended Statement of Reasons executed over your oath or affirmation. Your answer should include the following: (1) a specific statement with respect to each of the allegations set forth in the Amended Statement of Reasons; (2) any information or reference thereto which you may wish to offer which may explain, mitigate, or disprove the allegations in the Amended Statement of Reasons; and (3) a definite statement as to whether you desire a hearing, or in lieu thereof, wish to have your case determined without a hearing.

[fol. 66] Your reply to this communication and to the Amended Statement of Reasons should be filed as promptly as possible in order that the further proceedings may be carried forward. It should be filed directly with this Hearing Board by addressing it to the Executive Secretary of the Board at the address shown above on this letterhead.

You may be assured, of course, that if you request a hearing, the hearing will be scheduled to convene at as early a date as can be arranged. It is believed that a period of ten (10) calendar days after you have received this communication should be sufficient to enable you to reply to the Amended Statement of Reasons. However, additional time will be provided if it is requested.

Very truly yours,

T. L. WHITE
Executive Secretary

Enclosures
A/3

[fol. 67]

NAME: TAYLOR, Charles A.
CASE NO. OSD 56-198

AMENDED STATEMENT OF REASONS

(All criteria listed below refer to subparagraphs under Section III, paragraph 13a, Department of Defense Directive No. 5220.6, dated February 2, 1955.)

1. Criterion (4): Information before this Board indicates that, with knowledge or reason to know of the subversive aims and purposes of the Communist Party and with intent to support those aims and purposes, you were a member of the Communist Party of Erie County, New York, for a period approximating 18 months in 1942 and 1943, during which period your places of residence in Buffalo, New York, included 523 Masten Avenue and 1464 Michigan Avenue; that during a portion of that period you were sympathetically associated and affiliated with the Communist Party and knowingly and actively cooperated with divers persons known to you to be members of the Communist Party in working for the aims and purposes of the Party; that during the later portion of your said membership in the Communist Party you opposed certain policies of the Communist Party and certain Communist Party endorsed candidates for union office and, instead with knowledge or reason to know of the subversive aims and purposes of the Socialist Workers Party and intending to support those aims and purposes, you became sympathetically associated and affiliated with the Socialist Workers Party, which deviation from the Communist Party policies and from support of candidates together with other factors hereinafter set forth and together with sympathetic association and affiliation with the Socialist Workers Party, resulted in your expulsion from the Communist Party, but notwithstanding all of which you may still be a sympathetic supporter of the subversive aims and purposes of the Communist Party, and may still be sympathetically associated and affiliated with the Socialist Workers Party.

(*Communist Party*: On May 28, 1942, in connection with the Harry Bridges case that was widely publicized

throughout the United States at that time, the Attorney General of the United States characterized the Communist Party of the United States of America as an organization which, " . . . from the time of its inception in 1919 to the present time, . . . believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States."

Even before that date, the Communist Party had been officially characterized by various governmental groups as an instrumentality of the Soviet Union, e.g., the Annual Report of the Special Committee on Un-American Activities, House of Representatives, dated January 3, 1940, wherein it was described as a foreign conspiracy masked as a political party which was actually functioning for the Soviet Union.

[fol. 68] *Socialist Workers Party*: The Socialist Workers Party represents the Trotskyite wing of the Communist movement in the United States. One issue of its official newspaper, "Militant," described its principles in the following language:

"The belief that in such a country as the United States we live in a free democratic society in which fundamental economic change can be effected by persuasion, by education, by legal and purely parliamentary methods is an illusion. While relying primarily on mass actions, propaganda and advocation as the means for further its revolutionary aim, the Party will also participate in electoral campaigns, although at all times contending against the fatal illusion that the masses can accomplish their emancipation through the ballot box."

The Socialist Workers Party was officially characterized by the Attorney General of the United States in a letter released for publication on December 4, 1947, as a subversive and Communist organization which seeks to alter the form of government of the United States by unconstitutional means. More recently it has been designated by the Attorney General as an organization within the purview of Executive Order 10450.)

This information is:

(1) You became a member of the Communist Party, Erie County, New York, in about the summer of 1942. You were a member of the Aircraft Division or Aircraft Branch. For a while you were a member of the "B and C" Branch and then, in about July 1943, you were transferred from the "B and C" Branch to the "12th Ward" Branch. Your membership Book No. was 3060.

(2) In the latter part of 1943, you were expelled from membership in the Communist Party. You had personal knowledge of this expulsion.

(3) During the earlier portion of your Communist Party membership in 1942 and 1943, you paid Communist Party dues, somrtimes paying them directly to Svea Katz, the Erie County Communist Party Secretary; you attended Communist Party meetings, some of which took place at Communist Party Headquarters at 75½ W. Chippewa Street, Buffalo, New York, and some at your own residence at 523 Masten Avenue; on at least one occasion you distributed Communist Party leaflets at the Municipal Auditorium in Buffalo; you supported Communist Party policies; you followed the Communist Party line.

(4) Later during this same period of Communist Party membership, you became actively and outspokenly opposed, as hereinafter indicated in this subparagraph, to certain Communist Party policies and certain Communist Party endorsed candidates for union office. You opposed the "no strike pledge" and "incentive pay" policies supported by the Communist Party, and you opposed Frankenstein and Addes who were endorsed by the Communist Party as candidates for union office. You affiliated yourself with a group of persons who supported Socialist Workers Party policies and objectives such as militant action and strikes. Consistent with Socialist Workers Party policy, and contrary to Communist Party policy, you were one of the leaders in a brief strike at the Bell Aircraft plant where you worked. You stopped paying Communist Party dues and stopped attending Communist Party meetings.

[fol. 69] (5) Because of your active opposition to certain Communist Party policies and candidates, you became the subject of discussion among Communist Party members and leaders. You were aware of their membership in the Communist Party and of their disapproval of your actions. For instance, you know that Freda Werb, James Conners, Clara Lester, and Sam Wiseman were Communist Party members and leaders and you know that your actions hostile to certain Communist Party policies and candidates were a matter of concern to them because, among other things, they called you before them in their official capacity as Communists and admonished you.

2. Criterion (1): Information before this Board indicates that you had and may still have a sympathetic interest in the Communist movement. This information is that contained in paragraph 1, preceding.

3. Criterion (16):

You completed and signed two "Personnel Security Questionnaires" and a Certificate of Non-Affiliation with Certain Organizations," each containing deliberate falsifications, misrepresentations, and omissions of material facts. One such Questionnaire was dated 8 September 1954, and the other was dated 2 July 1956, and the Certificate of Non-Affiliation was dated 2 July 1956. The Questionnaire and the Certificate were delivered to the Bell Aircraft Corporation, Buffalo, New York, your then employer, and each contained a statement certifying that the entries "made by me are true, complete, and correct to the best of my knowledge and belief and are made in good faith." These falsifications, misrepresentations, and omissions were:

(1) By Item 25 of each of the two Questionnaires you were requested to list all of your places of residence "from 1 January 1937, starting with present." In response to this request, you omitted from each of these two Questionnaires your place of residence at 1464 Michigan Avenue, Buffalo, New York, where you resided during a portion of the years 1942 and 1943.

(2) By Item 26 of the Questionnaire dated 8 September 1954, you were requested to show your "Organiza-

tional Membership (List all organizations except labor unions in which you held o have held membership)." In response to this request, you inserted the word "None". By Item 26 of the Questionnaire dated 2 July 1956 you were requested to show your "Organizational Membership. List all organizations except labor unions and except organizations listed on DD Form 48-1 in which you hold or have held membership." In response to this request you entered the word "None. In the Certificate of Non-Affiliation, in response to a series of questions asking whether you then were or ever had been a member of, or associated or affiliated with, any of a list of organizations which included, among others, the following: "Communist Party, U.S.A., its subdivisions, subsidiaries and affiliates," and "Socialist Workers Party, [fol. 70] including American Committee for European Workers' Relief" you entered the word "No". As set forth in paragraph 1 herein, you had been a member of the Communist Party, and had been and might still be associated and affiliated with the Communist Party, and had been and might still be associated and affiliated with the Socialist Workers Party.

4. Criterion (15): Information before this Board indicates that you are not reliable or trustworthy. This information is:

(1) The information set out under paragraphs 1, 2, and 3 above.

(2) Your sworn reply dated October 9, 1956 to the Statement of Reasons issued under date of September 10, 1956, and your testimony given under the applicability of Title 18, Section 1001, of the United States Code, during the hearing held in your case before the New York Industrial Personnel Security Hearing Board on November 1, 2, and 14, 1956, contain, in substance, the following material statements which were deliberately and knowingly either false or misleading:

(a) That you have never been a member of the Communist Party or of any branch of the Communist Party.

(b) That before your receipt of the Statement of Reasons in this case you had no knowledge of the subversive aims and purposes of the Communist Party.

(c) That you have never had a sympathetic interest in Communism.

(d) That you have not knowingly paid Communist Party dues.

(e) That you have never paid any money that to your knowledge went to the Communist Party.

(f) That you have not attended Communist Party meetings.

(g) That you have never visited Communist Party Headquarters when located at 75½ W. Chippewa Street, Buffalo, New York.

(h) That no group or organization other than your own local union sought your support for opposition to the "no strike pledge" during 1942 and 1943 while you were employed by Bell Aircraft at Buffalo, New York.

(i) That you did not know Clara Lester or ever hear her name until the hearing mentioned in subparagraph 4(2), proceding.

[fol. 71] (j) That you did not know Svea Katc (Katz).

(k) That you did not know Sam Wiseman, at least not prior to 1943.

(l) That your answer "None" to Item 26 of your aforementioned Personnel Security Questionnaires dated 8 September 1954 and 2 July 1956, in so far as such answer was intended to encompass membership in the Communist Party

or any of its subdivisions, subsidiaries, and affiliates, was a truthful answer.

(m) That your answer "No" to questions 1 through 6 of your aforementioned "Certificate of Non-Affiliation with certain Organizations" dated 2 July 1956, in so far as such answer was intended to encompass membership in the Communist Party or any of its subdivisions, subsidiaries, and affiliates, and in so far as it was intended to encompass affiliation or association with the Socialist Workers Party or with the Communist Party or any of its subdivisions, subsidiaries, and affiliates, was a truthful answer.

(3) The information before this Board which forms the basis for the allegations contained in this Amended Statement of Reasons shows that the information relied upon combines a specific reference to one of the following names: "Charles Taylor" or "Charlies Taylor" or "Chas. Taylor" or "Charles T: or "Charles Allen Taylor" with one or more of the following descriptive items all of which, according to information before this Board, apply to you: (A) He was employed by Bell Aircraft Corporation, Buffalo, New York, during 1942 and 1943 and left Buffalo before 1945. (b) In his employment by Bell Aircraft in Buffalo, New York, he worked as a tool maker. (c) He was a member of Local 501, UAW-CIO, at Bell Aircraft in Buffalo, New York, and held office of union shop steward and union committeeman. (d) He resided at 523 Masten Avenue, Buffalo, New York, except that for a short while in the years 1942 and 1943 he left that address and resided at an address on Michigan Avenue, Buffalo, New York, and this address was 1464 Michigan Avenue, Buffalo. (e) In 1943, he took a leading part in a brief strike at Bell Aircraft where he worked. (f) In 1943, he was elected as a delegate from local 501 to the 1943 UAW-CIO convention. (g) At the 1943 UAW-CIO convention to which he went as a delegate, he voted in support of the Reuther Group. (h) At a local

union meeting in July 1943, at which a resolution supporting Lewis' strike policy was passed, he spoke in favor of this policy on the union floor. (i) A photograph.

[fol. 72] 5. Criterion (20):

Information before this Board furnishes reason to believe that you may be subject to coercion, influence or pressure which may cause you to act contrary to the best interests of the national security. This information is that contained in paragraphs 1, 2, 3, and 4 proceding.

[fol. 73]

EXHIBIT NO. 24 TO STATEMENT OF FACTS

Law Offices
RAUH and LEVY
1631 K Street, Northwest
Washington 6, D. C.

June 25, 1958

Republic 7-7795

Joseph L. Rauh, Jr.
Daniel H. Pollitt
John Silard

T. L. White, Executive Secretary
New York Industrial Personnel
Security Hearing Board
45 Broadway
New York 6, New York

Dear Mr. White:

You will find enclosed herewith the sworn reply of Charles Allen Taylor to the Amended Statement of Reasons furnished him with your letter of transmittal dated June 19, 1958. The reply sets forth the conditions under which a further hearing is requested and requests that, "if there is to be a hearing, it be held forthwith and, if not, that you make your decision on the present record forthwith.

The reasons why a hearing or determination without hearing is requested forthwith are as follows: In September of 1956 Mr. Taylor was served with charges to the effect that he had membership in the Communist Party in 1942 and 1943 and "may still have." On November 1, 2 and 14, 1956, he appeared at a hearing before your Board where he was refused confrontation by his accusers. Despite the difficulty of proving a negative, and proving one so long past, Mr. Taylor produced at the hearing not only his sworn testimony but also the testimony of eleven witnesses, demonstrating conclusively that his interests and activities, his friends and associates, his reputation in his local union and his position on union matters were all anti-Communist. The full hearing record demonstrates that the allegations against Mr. Taylor were either willfully false or based upon mistaken identity.

Notwithstanding these circumstances, on June 14, 1957 Mr. Taylor was advised by the Director of the Office of Industrial Personnel Security Review that he had been denied clearance for access to classified defense information; the untested allegations of some unknown informer had been preferred to the sworn testimony of Mr. Taylor and eleven reliable witnesses.

On November 22, 1957, the undersigned having been retained as counsel by Mr. Taylor, we wrote to the Sec- [fol. 74] retary of Defense detailing the incredible injustice done Mr. Taylor and requesting a reversal of the decision denying him clearance "as promptly as possible." Shortly thereafter the office of the General Counsel of the Secretary of Defense was advised by the undersigned that an expeditious determination was requested so that Mr. Taylor could, if necessary, pursue his remedies in the courts. No reply was received to this letter. On January 23, 1958 we telegraphed the Secretary of Defense requesting "an immediate response by you as to when we may have an answer to you letter of November 22nd." Thereupon on February 3, 1958, the General Counsel of the Department of Defense informed us that "The record reflects that the determination (to deny clearance) was reached after giving careful and deliberate consideration

to all the evidence. The conclusion reached from this review is that the adverse determination is neither arbitrary nor capricious but is, on the contrary, *reasonably supported* . . . However, although it does not appear that the adverse determination should be reversed on the basis of the present record, yet it is believed appropriate in this instance to reopen the case and obtain any additional information that may be available." The letter concluded by stating that that investigation would be "completed in about two or three weeks, after which you will receive further word."

No further word clarifying this equivocal statement was received in two or three weeks or two or three months. Consequently, on April 24, 1958, Mr. Taylor filed a complaint in the United States District Court for the District of Columbia praying as follows:

> "1. That this Court declare that plaintiff is entitled to a full and fair hearing before defendants or their agents upon the charges against him, at which hearing he is given opportunity to be confronted with the witnesses and the evidence upon which the charges are based.
>
> 2. That this Court declare that the determination of June 14, 1957 denying plaintiff access to classified defense information was in violation of his rights under the Fifth Amendment to the Constitution of the United States.
>
> 3. That the defendants Neil McElroy and A. Tyler Port be restrained from enforcing the determination of June 14, 1957, denying plaintiff access to classified defense information and that said denial be reversed, rescinded and annulled.
>
> [fol. 75] 4. That plaintiff have such and further relief as to the Court may seem just and proper."

Not until June 5, 1958, more than six months after our appeal to the Secretary of Defense and more than six weeks after the institution of action in the courts, did

we hear from the Department of Defense. On that day we received a letter dated May 31, 1958 from the General Counsel of the Defense Department announcing that the adverse decision in Mr. Taylor's case, although reasonably supported, has been set aside and that the case was being returned to your Board for unexplained "further proceedings."

By letter of June 19th you transmitted an Amended Statement of Reasons. The charges contained in the Amended Statement are substantially identical with the former charges. The only real difference between the old and the new charges is that the new charges, instead of alleging reason to believe that Mr. Taylor "may still have membership in the Communist Party," now alleges that he was expelled from the Communist Party in 1943 by virtue of having become "sympathetically associated and affiliated with the Socialist Workers Party." This new charge is, of course, equally false and unjustified as the old charge and is in large measure in consistent with the former charge. We find it somewhat shocking that Mr. Taylor should have been charged in 1956 with possible present membership in the Communist Party, whereas he is now charged with having been expelled 15 years ago because of his opposition to the Communist Party. This "new remembering" by the secret informer illustrates once again the dangers of non-confrontation. In any event the former hearing record shows the present charge to be as patently in error as the former charge; Mr. Taylor never having been a Communist, he could not have been expelled.

The Amended Statement of Reasons also includes a trifling charge that Mr. Taylor omitted a short-lived address on a personnel security questionnaire. The third "new" element is the Board's assertion that Mr. Taylor's denials of guilt at his former hearing were deliberately and knowingly false.

It appears to us that the first new assertion, that of expulsion from the Communist Party because of some Socialist Workers Party sympathy or affiliation, is *inconsistent* with what was asserted before and in any case

has been fully and completely answered at the first hearing. The second assertion concerning the omission of a single address on a long questionnaire is legally *immate-*
[fol. 76] *rial.* The third "new" assertion, that Mr. Taylor's former testimony to this Board was knowingly false, seems to us nothing short of *indecent.* It is bad enough that Mr. Taylor will have his case decided by your Board, which is his accuser on these amended charges perpared by your Board; but it is even worse that your Board should accuse him of perjury on the basis of secret and undisclosed information in the face of his sworn denials supported by the testimony under oath of eleven honorable citizens. To our knowledge, Mr. Taylor is the first American to be judged by a tribunal which accuses the defendant upon secret accusations of being untruthful in his assertions of innocence.

The three "new" items in the Amended Statement of Reasons can thus appropriately be described as *inconsistent, immaterial* and *indecent.* Coming on top of the Department's assertion even now that the adverse determination against Mr. Taylor was "reasonably supported," one can properly conclude that the amended charges, and indeed the "further proceedings," are for the sole purpose of delaying the pending litigation in the United States District Court for the District of Columbia. Only a forthwith hearing at which the Board would confront Mr. Taylor with his accusers or otherwise produce evidence in support of the charges against him or a forthwith determination on the present record will dispel this conclusion. We request immediate action.

Sincerely yours,

Joseph L. Rauh, Jr

John Silard

Enclosure

cc: Charles A. Taylor
Robert Dechert (with enclosure)
A. Tyler Port " "
Harold A. Cranefield "

[fol. 77] JUN 26 1958

REPLY TO AMENDED STATEMENT OF REASONS

In reply to the Amended Statement of Reasons dated June 19, 1958 Charles Allen Taylor, being duly sworn, deposes and says as follows:

1. The charges contained in the Amended Statement of Reasons dates June 19, 1958, are substantially identical with the original charges contained in the Statement of Reasons of September, 1956. These unfounded and unverified charges by unnamed and unidentified persons were shown at the previous hearing to be completely false, malicious and unfounded.

2. *Charges 1 and 2*

The first and second charges assert in essence that I was a member of the Communist Party in 1942 and 1943; that I was sympathetically associated and affiliated with the Communist Party; that I held a Party membership book number; that I paid dues to the Party and attended Party meetings. I categorically denied all these charges at the hearing before this Board and testified in full under cross-examination that I have never been a member of, never paid dues to, never held a membership card in, never attended a meeting of or associated in any way with the Communist Party of the United States, all of which testimony I hereby reaffirm.

In addition I produced at the hearing before this Board overwhelming evidence of the falsity of these charges, as follows:

My son, Eugene Taylor, testified that during the period in question and thereafter, I never discussed Communism or the Communist Party, had no Communist books or literature in the house, and had no Communist associates. [fol. 78] Joseph Rosmyslowski testified that in the period in question I openly opposed and became bitter enemies with Allie Brodose, the Communist leader of the local

union; that on one occasion he had heard an angry argument between me and Allie Brodose in which I repeatedly referred to Brodose as "Red." He testified that it was the attitude of the active union people that I was "an independent thinker, and that I was not a Communist. Now or ever."

John Paul Maturski, who defeated Allie Brodose for the presidency of the local union in 1943 on an anti-Communist platform to depose Communist leaders of the union, testified for me. He stated that I stood with him publicly on many issues in opposition to the Communist Program urged by Brodose, and as concerning any allegation that I was a Communist during the period in question, "Nobody ever accused him . . . I always understood him to be a good trade union man." He testified that he had known me for about sixteen years and that he had never heard me designated as a Communist.

Gilbert McGovern, by his own characterization the most notorious Red-baiter in my local union, testified that he had never considered me to be a Communist or a Communist sympathizer, was shocked when he heard of the charges against me, and volunteered his testimony because "I think that's wrong. I think they have got him confused with Alven Taylor who substituted for Allie Brodose when Allie Brodose was exposed as being the head of the Communist Party in Bell Aircraft."

Wilbert Rowe testified that he had known me since 1941 and associated with me in local union politics, and as far as considering me a Communist, "it wasn't a case of considering, it was a case of knowing. I knew at all times that [fol. 79] Charlie Taylor was never a member." He testified concerning the many issues promoted by the Communists in the union in accordance with the Party policy of the time, upon which I was in strong and open opposition to the Communists. Mr. Rowe testified, "I know he was against them to the extent that I'm here in his behalf, because if I even thought for a second that he was a Communist, I'd be in the plant telling the people "I hope he doesn't get back.'"

Leon Meyers testified that he had worked in the plant with me since 1940. He recalled an incident late in 1942

or early 1943 when I had warned him about associating with Allie Brodose because "You know he's a 'Commie.'" Meyers stated, "I never heard anyone accuse Charlie (Mr. Taylor) of being a Communist at any time."

Harold Mear testified that he had worked in the same section, and had daily contact, with me since 1942; that he had never heard me talk favorably about Communism, had never heard anyone mention that I was a follower of the Communist Party line, that in his opinion I was a loyal American citizen and that I had the reputation of being a loyal American citizen. He related specific issues upon which I publicly attacked the position taken by the Communists during the years in question.

William Wagner, who testified he has known me for approximately fifteen years, attested to my public opposition to the Communists on various issues; that during the years in question I definitely did not have a reputation for being pro-Communist or being sympathetic toward Communism; and that he had no reservations about my being a loyal American.

Robert Meredith, employed at the same plant with me since 1942, testified to my opposition to the Communists in [fol. 80] the union and my good reputation.

Robert Siegeler testified that he had been a Bell employee since 1940; that during 1946 and 1947 he carried on an active campaign to defeat the pro-Communist leadership of the UAW, and that I was one of his staunch supporters in that campaign.

Thomas H. Smith, who has worked with me and known me since 1941, testified as follows. ". . . If Russia or any foreign country invaded this country, Taylor would be the first guy to get shot fighting them. That's the kind of guy he is to me . . . He's a real, 100 per cent American."

Any fair reading of the record of the hearing will demonstrate that my interests and activities, my friends and associates, my general reputation in the union, my position on local union matters and my vocal opposition to the prevailing program of the Communists during the relevant period, were all anti-Communist. The new charge, just like the old one, is a patent falsehood based on either malicious or mistaken secret informants.

The first charge of the Amended Statement of Reasons also asserts that, during the latter part of my alleged membership in the Communist Party, I opposed certain of its policies and instead, with knowledge or reason to know the subversive aims and purposes of the Socialist Workers Party, became sympathetically associated and affiliated with that Party, which resulted in my expulsion from the Communist Party. This charge, of course, is equally and utterly false. Inasmuch as I was never a member of the Communist Party, I could not have been expelled therefrom. As concerns my "sympathetic association and affiliation with the Socialist Workers Party", [fol. 81] I have previously sworn that I have never been a member of any subversive organization or organization on the Attorney General's list. I hereby reaffirm that statement and assert that I have never been a member of, contributed dues to, or sympathetically or otherwise associated with, the Socialist Workers Party. I am and always have been just as opposed to Trotskyite Communism as to any other form of Communism.

The record of the previous hearing indicates that just as there were some Communist Party members in the local union during 1942 and 1943, there were some members of the Socialist Workers Party (see Tr. 184, 202, 205, 257). But all the testimony of the witnesses for me and the testimony I previously gave concerning my anti-Communism, my independence of action in the union, my loyalty to the United States, apply to the allegation that I associated myself with a Trotskyite organization dedicated to communist ideals and communist action. In supporting the candidates opposed to the faction led by the Communist Party members in the union, doubtless I supported the same candidates supported by Socialist Worker Party members and the same would be true of all the members of the local who were working to remove from power the faction led by Communist Party members. I always supported policies and programs that seemed to me to be in the best interests of the union and my fellow employees at Bell. The assertion that "consistent with Socialist Workers Party policy, and contrary to Communist Party policy" I supported militant actions and

strikes and led a brief strike at the Bell Aircraft plant is utterly meaningless.* Opposition to Communist Party [fol. 82] policy and persons during the period in question may have been consistent with Socialist Workers Party policy, but it was also consistent with good unionism, loyalty, Americanism, and anti-Communism. Apparently my reward for producing overwhelming testimony of anti-Communism is now to be accused of fighting Communism with the wrong people.

The only new claims contained in the first two charges are to the effect that I attended a Communist Party meeting at my own home and that I distributed Communist Party leaflets at the municipal auditorium in Buffalo. These charges are, of course, utterly false. I have on many occasions distributed leaflets at union meetings, but I have never knowingly distributed Communist Party leaflets because I have never knowingly supported the Communist Party or acted on its behalf. I reaffirm my denial of attendance at any Communist Party meetings.

3. *Charge 3*

The second part of charge 3 is based upon the allegations in charge 1 answered above and is hereby denied.

In the first part of charge 3 it is alleged that on two personnel security questionnaires dated 8 September 1954 and 2 July 1956 in Item 25 where I was requested to list my places of residence since 1 January 1937, I omitted 1464 Michigan Avenue, Buffalo, New York, "where you resided during a portion of the years 1942 and 1943." Apparently in listing the numerous addresses at which I have lived since 1937, I omitted this one address at which I resided many years ago for an extremely short period. Certainly this was an immaterial and insignificant omission. At the time I filled out the questionnaires I stated truthfully that "to the best of my knowledge and belief" [fol. 83] the information was complete. There could not possibly have been any purpose served by an intentional

* It is also in violation of Directive Number 5220.6, 13b providing that "legitimate labor activities shall not be considered in determining whether clearance should be granted or continued."

omission of this single, short-lived address among the many addresses at which I have resided and I deny any suggestion that this omission was or could have been intentional.

4. *Charge 4*

The fourth charge asserts that my previous testimony that I have never been a Communist Party member, attended its meetings, etc., is false. The allegations against me are either willfully false or based upon mistaken identity. All the testimony I have given in this case is true; I have made no false statements and I hereby reaffirm all of my previous testimony.

5. I am now and I have always been completely loyal and anti-Communist, as I could easily demonstrate if I were ever confronted with the persons upon whose statements the false and malicious accusations against me are based. In the absence of such confrontation, I can only refer this Board to the testimony I have previously given and to the testimony of the eleven persons who appeared on my behalf, all of whom knew me during the period I am alleged to have been associated with the Communist movement and all of whose testimony refutes the charges against me. Having already provided at the hearing information completely disproving the charges there and here made, I have no additional information to offer under point (2) of your letter of June 19, 1958.

Your letter of June 19, 1958, requests "(3) a definite statement as to whether you desire a hearing, or in lieu thereof, wish to have your case determined without a hearing." If your Board proposes to confront me with my [fol. 84] accusers or otherwise to produce evidence at a hearing in support of the charges, I desire a hearing. If, however, your Board cannot or will not do so, then I do not desire what would not in fact be a hearing and would serve no useful purpose because the Amended Statement of Reasons includes no new material allegations and because I have heretofore produced overwhelming pursuasive evidence of the falsity of the charges against me.

Since this case is pending in the United States District Court, I request that, if there is to be a hearing, it be held forthwith and, if not, that you make your decision on the present record forthwith.

/s/ Charles Allen Taylor
Charles Allen Taylor

Subscribed and sworn to before me this 24th day of June, 1958.

Notary Public

My commission expires: June 14, 1962

[fol. 85]

EXHIBIT NO. 25 TO STIPULATION OF FACTS

NEW YORK INDUSTRIAL PERSONNEL
SECURITY HEARING BOARD KL/ga
45 Broadway
New York 6, New York

June 30, 1958

REGISTERED
RETURN RECEIPT REQUESTED

Joseph L. Rauh, Jr., Esq.
1631 K Street, North West
Washington 6, D. C.

Re: Charles Allen Taylor
OSD 56-198

Dear Mr. Rauh:

Receipt is acknowledged of your letter of June 25, 1958 inclosing the reply of the above-named respondent to the Amended Statement of Reasons in his case.

In our letter to him of June 19, 1958 Mr. Taylor was requested to furnish a definite statement as to whether or not he desired a hearing or in lieu thereof wished to have his case determined without a hearing. In his reply

respondent has stated, "If your Board proposes to confront me with my accusers or otherwise to produce evidence at a hearing in support of the charges, I desire a hearing. If, however, your Board cannot or will not do so, then I do not desire what would not in fact be a hearing and would serve no useful purpose because the Amended Statement of Reasons includes no new material allegations . . .".

It is a standard procedure of the Department of Defense to invite witnesses to the extent that security considerations permit. The Department does not make it a practice to reveal the names of Government witnesses which it may intend to produce in advance of a hearing, nor is it prepared to state as a matter of fact whether any witnesses will be available in the instant case at the time of hearing.

It is difficult to understand your statement that the further proceedings in this case are for the sole purpose of delaying the pending litigation in the U.S. District Court. As your letter states, on November 22, 1957 the Secretary of Defense was requested by you to reverse the decision denying Mr. Taylor clearance. Pursuant to this request, a further investigation was conducted to determine whether or not the previous adverse decision should be set aside. Based on the results of this investigation it was determined that Mr. Taylor should be given a further opportunity to be heard.

[fol. 86] Inasmuch as the Amended Statement of Reasons contains new material and additional allegations that were not included in the original Statement of Reasons, the respondent is entitled to a hearing if he desires one, before a decision is made in his case. There is, of course, no obligation that he request the hearing, and in the event he does not, a determination will be made upon the basis of the information presently available to this Board which will include Mr. Taylor's reply to the Amended Statement of Reasons.

It is, therefore, again requested that Mr. Taylor advise whether or not he desires a hearing. Your reply should

be submitted within ten (10) calendar days after the receipt of this communication.

Very truly yours,

T. L. WHITE
Executive Secretary

[fol. 87]
EXHIBIT No. 26 TO STIPULATION OF FACTS

TLW/ga
WHitehall 3-8000, Extension 79
July 1, 1958

Joseph L. Rauh, Jr., Esq.
1631 K Street, N.W.
Washington 6, D. C.

REGISTERED
RETURN RECEIPT REQUESTED

Re: Charles Allen Taylor
OSD 56-198

Dear Mr. Rauh:

This will confirm our telephone conversation this morning in which it was agreed that the hearing in the above case, before a hearing panel of this Board be scheduled for 9:30 A.M., on FRIDAY, JULY 11, 1958.

Very truly yours,

/s/ T. L. White

T. L. WHITE
Executive Secretary

[fol. 88]
EXHIBIT No. 27 TO STIPULATION OF FACTS

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Mr. Rauh: The record will show that Mr. Silard, Mr. Rosmyslowski and I are here prepared to cross examine Mr. Taylor's accusers.

Now, I am not clear, Mr. Chairman, but it was my understanding from your statement that you are not prepared this morning to produce our accusers. Am I correct sir?

Chairman Waldman: That is correct, sir.

Mr. Rauh: I would like, then, if I might, to ask a number of questions about the accusers which the Board may or may not feel able, or may not know the answers to, and I hope the Board will not consider this anything but the effort of counsel to protect his client when I put these questions, and whatever answers I get I shall respect your feelings in giving the answers, and I hope you will respect mine in asking the questions.

Question 1. Does the Board have one informant to Mr. Taylor's alleged Communist Party membership in 1942 and [fol. 89] 1943 and his alleged CP expulsion for SWP sympathies or does it have more than one informant thereon?

Chairman Waldman: You mean present and available at this hearing?

Mr. Rauh: No, sir. I take it none are presently available at this hearing. I mean in the records of the files that you have which you said you were not making available to us.

Chairman Waldman: I can not give you that information, sir, because the giving of such information is precluded by paragraph 4 of the Department of Defense Directive 5220.6, dated February 2, 1955.

Mr. Rauh: Does the Board know the name of the one informant, if it is one, or the names of more than one, if it is more than one?

Chairman Waldman: I must give you the same ruling, sir.

Mr. Rauh: Does the Board know the occupation of the one or the more than one informants?

Chairman Waldman: Same ruling.

Mr. Rauh: Does the Board know the background of the one or more than one informants?

Chairman Waldman: Same ruling.

Mr. Rauh: Does the Board know whether the one or more than one informants has or have ever been in prison?

Chairman Waldman: Same ruling.

[fol. 90] Mr. Rauh: Does the Board know the degree of hearsay, and by this I would like to explain, does the Board

know how many people the statement of the original informant has gone through in reaching this Board?

Chairman Waldman: Same ruling.

Mr. Rauh: Have the one or more informants been asked to testify in the past two years?

Chairman Waldman: Same ruling.

Mr. Rauh: Have the one or more informants been asked to testify since the May 30th letter of the Department of Defense?

Chairman Waldman: Same ruling.

Mr. Rauh: Does the Board know whether the one or more informants have been asked to testify in the past two years?

Chairman Waldman: Same ruling.

Mr. Rauh: Does the Board know whether the one or more informants have been asked to testify since the May 30th letter?

Chairman Waldman: Same ruling.

Mr. Rauh: Is the amended statement of reasons based on amended stories by the one or more informants?

Chairman Waldman: I must give you the same ruling.

Mr. Rauh: Does the Board know whether the informant or informants have changed their stories?

Chairman Waldman: Same ruling.

Mr. Rauh: Is it not a fact that the omitted address [fol. 91] at which Taylor lived for only an admittedly short while comes from Taylor himself on some early questionnaire, or in a similar manner?

Chairman Waldman: Will you pass that, and I will give you a ruling on that later.

Mr. Rauh: The next one is in the same line, and I will put that and then you can withhold ruling on that. It is whether you know the source of the suggestion as to the omitted address.

The first was, is it not a fact that this comes from Taylor himself in an earlier matter, and, secondly, do you know.

Chairman Waldman: Well, I will withhold ruling on that until you finish with this series.

Mr. Rauh: Then I think this one goes to the same point, Mr. Waldman.

The amended statement of reasons says that he lived I believe "a short while" at this address that had been omitted. Does your information indicate how many weeks the short while was?

The reason I ask that is that our information indicates it was three to four weeks, and I would just like to confirm that.

Chairman Waldman: All right. We will withhold ruling on that.

Mr. Rauh: And we are trying to get the exact duration [fol. 92] of it.

Does the Board have in its possession what is alleged to be a Communist Party membership book of Mr. Taylor, and/or does it have information that a Communist Party membership book actually exists?

Chairman Waldman: I must give you the same ruling that I have given when I gave you the rulings before.

Mr. Rauh: Just to avoid any negative answer to a double question, which my assistant just called to my attention, I would like to split up the question.

Do you have what is alleged to be Mr. Taylor's alleged Communist Party membership book?

Chairman Waldman: Same ruling.

Mr. Rauh: Do you have any information that a Communist Party membership book exists?

Chairman Waldman: We will withhold ruling on that.

Mr. Rauh: In what name is the card, if you have the card?

Chairman Waldman: Withhold ruling on that.

Mr. Rauh: In what name is the Communist Party membership book if you only have information that it exists?

Chairman Waldman: We will withhold ruling on that.

Mr. Rauh: What I want to point out here, and why I have asked that, is that, as this Board knows, Communist Party membership books are never issued in the name of [fol. 93] the actual person. Since you have never given us a pseudonym and never asked the question of a particular pseudonym your story that you are relying on is obviously false and fraudulent on its face.

In other words, if you have what alleges to be a Communist Party card in the name of Charles Allen Taylor,

the one man in the United States to whom that book or card does not belong is Charles Allen Taylor.

It is as clear as the nose on your face, the history is as clear as can be, that Communists, particularly in those years,—and this is clear to anybody that knows the story, and you must know it—did not issue cards in the name of the people.

If you have a card, or information that one exists, it is obviously in the name of Charles Allen Taylor. If it were in the name of John Doe he would have been asked at this hearing "Did you ever use the pseudonym "John Doe." He was not asked. Therefore, it is perfectly clear even on this record that there is no book.

I have no further questions, and I will await your ruling on the few that have been withheld.

Chairman Waldman: Let's take a few minutes recess, Mr. Rauh, so that we can have an executive session on these open rulings.

(At this point the Board had a brief executive session.)

[fol. 94] Chairman Waldman: Mr. Rauh, with reference to the rulings on which decision was reserved, with reference to your question: "Is it not a fact that the omitted address at which Taylor lived for admittedly only a short while comes from Taylor himself on some early questionnaire or in a similar manner,"—the answer is no.

With reference to your question—I have it quoted here: "It is whether you know the source of the suggestion as to the omitted address,"—the answer is yes.

With reference to your question: "The amended statement of reasons says that he lived I believe 'a short while' at this address that had been omitted. Does your information indicate how many weeks the short while was?" The answer is no. The information that we have is as the statement of reasons alleges, a short period of time.

With reference to your question, "Do you have any information that a Communist Party membership book exists,"—I must give you the same ruling, to the effect that the release of information as to this matter is barred as far as we are concerned under paragraph 4 of the directive.

With reference to your question, "In what name is the card, if you have the card,"—I must give you the same ruling, that we cannot release such information.

With reference to your question, "In what name is the Communist Party membership book, if you only have infor- [fol. 95] mation that it exists,"—I must give you the same ruling, that the information cannot be released.

Now, I believe that I have gone down your list. Correct me if I am wrong.

Mr. Rauh: No, sir; I believe you have.

Now, as the record shows, we asked for a hearing "if your Board proposes to confront me with my accusers or otherwise to produce evidence in support of the charges."

We were unable to get an answer to this and, therefore, we came this morning. We have the answer, that you are not prepared to do this this morning.

All I can say is that the Government's answer in Federal Court in Washington is due on July 24, 1958. We request that if we are to be confronted we be confronted immediately, and if we are not to be confronted you make your decision immediately on the present record so that the Government in its answer on July 24th, which has already been extended with our consent for 30 days, can state your position.

I would like to say, in addition, that if this is not done we intend to tell the Court not only that the Government of the United States after two years is unwilling to say whether they will confront Mr. Taylor, but also to tell the Court our belief that this hearing is not in good faith.

I say it is not in good faith after careful thought. It was not granted; it was not ordered. It was not granted because [fol. 96] it was not at our request. It was not ordered until after we were in Court and the Government's answer was due. When ordered no promise of confrontation was made. When we said "if you will confront us, give us a hearing," we received an evasive answer. When we came to this hearing to see our accuser we are still given an evasive answer.

We leave this hearing with the one request, that prior to July 24 we either face our accuser and you make a decision on that, or you make a decision on the present record.

Thank you very much.

(Whereupon the hearing in the above-entitled matter was adjourned sine die.)

[fol. 97]

EXHIBIT NO. 28 TO STIPULATION OF FACTS

NEW YORK INDUSTRIAL PERSONNEL SECURITY HEARING BOARD
45 Broadway, New York 6, New York

July 23, 1958

Joseph L. Rauh, Jr., Esq.
Rauh and Levy
1631 K Street, Northwest
Washington 6, D. C.

REGISTERED
RETURN RECEIPT REQUESTED

Re: Charles Allen Taylor

Dear Mr. Rauh:

Pursuant to your oral request to this Board by telephone on July 1, 1958, a hearing was scheduled in the above-entitled case for July 11, 1958. This request immediately followed an exchange of communications in which you and Mr. Taylor were informed by this Board that Mr. Taylor's reply to the Amended Statement of Reasons and your letter transmitting that Reply did not constitute a request for a hearing if Mr. Taylor wanted a hearing, and granting Mr. Taylor a further opportunity to request a hearing or a determination on the basis of the complete file without a hearing.

On July 8, 1958, you were orally informed by this Board by telephone that efforts had been previously undertaken to secure witnesses for the hearing, and that while it could not then be stated as to whether or not witnesses would be present, nevertheless, in view of the then pending but still incomplete efforts being made, the hearing on July 11 might not be completed on that date. Nothing further was heard from you, and the hearing opened as scheduled on July 11, 1958.

The hearing record reflects that at the outset of the hearing on July 11, and again during the course of it, you were informed by the Board that the efforts to obtain witnesses were still incomplete. The hearing record further reflects that Mr. Taylor did not testify or present any witnesses, and that, following certain remarks by you, the hearing was adjourned sine die.

It now appears to be likely that, within the limitations of security considerations, the only living witnesses whom the hearing Board will be able to present will be two persons living in Buffalo. These persons have indicated that if they can appear before the hearing board in Buffalo, they are prepared to give personal testimony showing that your client, Mr. Taylor, lived at 1464 Michigan Avenue, Buffalo, New York during a portion of the years 1942 and 1943. This expected testimony is relevant to the allegation of Mr. Taylor's deliberate omission of [fol. 98] a material fact from two Personnel Security Questionnaires which he completed; it is also relevant to Mr. Taylor's alleged former membership in the Communist Party inasmuch as some of the information tending to show his membership in the Communist Party reflects his residence during that period at that address. It is important to point out, however, that these witnesses are not known to have any other information connecting Mr. Taylor in any way with the Communist Party, and that they are not expected to give any testimony on that aspect of the case.

You are notified that it is proposed to convene a further session of the hearing in this case at Buffalo, New York on July 31, 1958. The time and place of the hearing would be at 10:00 A.M., Part Six, City Court Building, 40-42 Delaware Avenue, Buffalo, New York.

The purposes of the proposed July 31 session of the hearing would be as follows:

(1) In accordance with the requirements of the Industrial Personnel Security Review regulation which governs the handling of Mr. Taylor's case, to complete the

record of the hearing heretofore commenced at your request on July 11, 1958.

(2) To permit the two witnesses above-mentioned to appear and testify.

(3) To present such other information of an evidentiary nature as may be presented within the limitations of security considerations.

(4) To provide a further opportunity for Mr. Taylor to testify in his own behalf or to present witnesses or other information in his behalf.

It is believed that no further session of the hearing will be required in this case after the completion of the proposed July 31 session at Buffalo. Accordingly, this Board expects to close the hearing record at that time. Thereafter, as soon as the transcript of hearing is available and you have had an opportunity to suggest any necessary corrections in it and to submit any further written arguements or briefs which you may desire to submit, the Board will proceed promptly to its consideration of the complete file and to its determination of the case in accordance with the requirements of the Review Regulation.

At your earliest convenience please advise this Board whether or not the above proposed arrangements for hearing on July 31, 1958 at Buffalo, New York are satisfactory. Your written reply should be received by this Board not [fol. 99] later than July 29, 1958.

Very truly yours,

/s/ T. L. White
T. L. White
Executive Secretary

[fol. 100]

EXHIBIT NO. 29 TO STIPULATION OF FACTS

LAW OFFICES
RAUH AND LEVY
1631 K STREET, NORTHWEST
WASHINGTON 6, D. C.

July 25, 1958

JOSEPH L. RAUH, JR.
DANIEL H. POLLITT
JOHN SILARD

REPUBLIC 7-7795

Mr. T. L. White, Executive Secretary
New York Industrial Personnel
Security Hearing Board
45 Broadway
New York 6, N. Y.

Dear Mr. White:

I hasten to respond to the Board's letter of July 23rd.

It is quite obvious that the Board's present role in this case is solely to act as an adjunct to the Government's defense in the suit pending in the United States District Court for the District of Columbia and that the sole purpose of your letter of July 23rd was to delay a final decision which the Government would have been forced to include in its July 24th answer to Mr. Taylor's bill of complaint. Instead of rendering your decision, your obviously dilatory letter of July 23rd is included in the Government's answer of July 24th as alleged evidence that the case is still open and that, therefore, Mr. Taylor has not exhausted his administrative remedies.

In our ten years experience with loyalty-security programs, the most shocking thing we have ever seen is the effort of the New York Industrial Personnel Security Hearing Board, as an adjunct to the defense of Mr. Taylor's action in federal court, to seek to sustain its decision that Mr. Taylor was a security risk on the ground that he omit-

ted an address at which he resided for a short while 15 or 16 years ago.

Let us look briefly at the record. In September of 1956 Mr. Taylor was served with charges to the effect that he had membership in the Communist Party in 1942 and 1943 and "may still have." On June 14, 1957, the Office of Industrial Personnel Security Review sustained these charges wholly on the basis of secret informants and secret information undisclosed to Mr. Taylor. After fruitless waiting for the Defense Department to rectify this incredible injustice, [fol. 101] Mr. Taylor, on April 24, 1958, went to federal court for vindication of his name and his job. Then, the Defense Department, six weeks after Mr. Taylor went to court, decided to hold a new hearing, not to confront Mr. Taylor with the secret informants and secret information on which they had predicated their adverse ruling and thus to give him a chance to clear himself, but to find a new ground for denial of clearance that might stand up in court. And what is this new ground: that, in a long list of past addresses, Mr. Taylor had forgotten to mention that he had resided at 1464 Michigan Avenue in Buffalo "for a short while in the years 1942 and 1943." In other words, unable legally to sustain the Board's initial charge that Mr. Taylor had been and may still be a Communist, the Board now charges him with being a security risk because he did not include in a list of prior residences "a-short-while" address 15 or more years ago.

We ask each member of this Board to search your personal records and determine whether you never left out an ancient address on an employment form or, indeed, something far more significant. We ask too whether this allegation by afterthought would ever have been made by you had not Mr. Taylor undertaken a judicial challenge of your determination upon secret evidence of the real charge against him.

There is no possible reason for a hearing in Buffalo so that "two persons living in Buffalo" can, as you say in your letter, "give personal testimony showing that . . . Mr. Taylor lived at 1464 Michigan Avenue, Buffalo, New York during a portion of the years 1942 and 1943." Mr. Taylor's reply

of June 24, 1958, admits this in the following words: "Apparently in listing the numerous addresses at which I have lived since 1937, I omitted this one address (1464 Michigan Avenue, Buffalo, New York) at which I resided many years ago for an extremely short period." In view of the fact that Mr. Taylor has conceded that he lived at that address, I cannot understand why you want a hearing to prove this admitted fact. Do you really believe that any court is going to be fooled into holding that you gave Mr. Taylor a fair hearing by confronting him with witnesses on an admitted issue when you deny him confrontation on the only basic and disputed issue?

[fol. 102] The proposed Buffalo "hearing" is unnecessary because Mr. Taylor conceded the omitted residence. But, in order to make this "hearing" in Buffalo doubly unnecessary, we hereby offer to stipulate, on behalf of Mr. Taylor, in the very words of the amended charges sent us by your Board, as follows:

> "Mr. Taylor omitted from Item 25 of Personnel Security Questionnaires dated September 8, 1954 and July 2, 1956, which Item 25 requested him to list all his places of residence 'from 1 January 1937, starting with present', his place of residence at 1464 Michigan Avenue, Buffalo, New York where he resided for a short while in the years 1942 and 1943."

In view of this offer to stipulate exactly what your letter of charges states and exactly what the two Buffalo witnesses will say, we cannot see any grounds for the further harassment of Mr. Taylor by the expense of a hearing in Buffalo (to say nothing of the ridiculous waste of taxpayers' money in sending a whole hearing board from New York to Buffalo to hear admitted and stipulated facts) and by attempting to delay further the judicial proceedings based on your refusal to confront Mr. Taylor with the witnesses on the only material issue—Mr. Taylor's alleged Communism or lack of it.

In the sentence at the top of page 2 of your letter—"It is important to point out, however, that these witnesses are not known to have any *other* information connecting Mr.

Taylor in any way with the Communist Party, and that they are not expected to give any testimony on that aspect of the case"—the word "other" is seriously misleading. The word "other" implies that these two Buffalo witnesses might give some information relating to Communism, but all that they are to testify to, according to your own letter, is that Mr. Taylor lived at a particular place for a short while in 1942 or 43. It is your secret informants and secret information which provides a Communist twist to this address, not anything that these people would say. You offer us cross-examination of the address, but refuse us cross-examination of the secret informants and secret information which might somehow make the address relevant. Had Mr. Taylor tried any such shenanigans as your use of the word "other", you might have had some cause to hold him a security risk.

[fol. 103] The third to last paragraph of your letter is equally misleading. You set forth four alleged reasons for the hearing in Buffalo when in fact the earlier part of your letter makes clear there is only one reason—to take testimony that Mr. Taylor lived at a place that he has already said he lived at. Your third to last paragraph states that "the purposes of the proposed July 31 session of the hearing would be as follows:

"(1) In accordance with the requirements of the Industrial Personnel Review regulation which governs the handling of Mr. Taylor's case, to complete the record of the hearing heretofore commenced at your request on July 11, 1958." But the record, if you will not confront us with the secret informants or secret information that Mr. Taylor was a Communist, is already complete or can be completed by the addition of the stipulation we offer and this without an expensive trip to Buffalo. Incidentally, the gratuitous point that the July 11, 1958 hearing was at our "request" deserves a quick answer. We asked for a hearing at which we would be confronted with the witnesses allegedly contravening Mr. Taylor's denial of Communist Party membership; we never asked for a hearing to be confronted by witnesses to testify to matters that are admitted in Mr. Taylor's reply.

"(2) To permit the two witnesses above-mentioned to appear and testify." This is, in fact, the only reason for the Buffalo hearing, and of course, it is no reason at all since we admit what they would say and agree to stipulate to it.

"(3) To present such other information of an evidentiary nature as may be presented within the limitations of security considerations." This phrase is meaningless in view of your earlier statement that "the only living witnesses whom the Board will be able to present will be two persons living in Buffalo" who will testify to the admitted residence.

"(4) To provide a further opportunity for Mr. Taylor to testify on his own behalf or to present witnesses or other information in his behalf." We made clear at the July 11th "hearing" that in our opinion the new charges are identical [fol. 104] with the old except for an *inconsistent*, an *immaterial* and an *indecent* allegation. We find nothing for Mr. Taylor to rebut until the secret informants and secret information on the material issue of Communism are made available for cross-examination.* Certainly producing two witnesses to testify to an admitted fact is not confrontation.

This new dilatory and harassing tactic only adds evidence to our previous conclusion stated in our letter of June 25 "that the amended charges, and indeed the "further proceedings," are for the sole purpose of delaying the pending litigation in the United States District Court for the District of Columbia."

The Board has power to hold a hearing any place it wants. If it refuses our stipulation, and intends to put on these two witnesses in Buffalo, we will be there. In common decency and fairness, however, we ask that you accept the stipulation and make your decision *immediately*, whatever

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* Our position on this is made very clear in the transcript of the July 11th hearing. We hereby state that we do not intend to submit corrections to that transcript and we waive our ten-day period for such corrections. Since the transcript of the July 11th hearing is satisfactory and since there is nothing left to be transcribed, what we ask is a decision and an end to these delaying tactics.

it may be. It is bad enough to deny a man his job by the continuation of an obviously erroneous decision. It is even worse to use the pretense of a hearing as a means of delaying his day in court.

Sincerely yours,

Joseph L. Rauh, Jr.

cc: Charles A. Taylor (with incoming)
Robert Dechert " "
A. Tyler Port " "
Harold A. Cranefield " "
Richard Lipsitz " "

[fol. 105]

EXHIBIT NO. 30 TO STIPULATION OF FACTS

Chairman Waldman: I will read it slowly, in case you want to take some notes as we go along.

"One confidential source furnished information in substance reflecting the existence of a Communist Party record reflecting that in or about July 1943 Charles Taylor, Book No. 3060, had been transferred from the B&C Branch to the 12th Branch of the Communist Party, and that Taylor had paid dues through April; information showing in substance that the name of Charles Taylor, 1464 Michigan Avenue, was included in a list of names and addresses marked '12th Ward Membership, 1943, Mary Smith, President;' information showing in substance that in or about September 1943 an official of the Niagara Frontier Committee had reproved Taylor for participating in a strike or work stoppage at Taylor's place of employment, and for making public statements against incentive pay and in favor of a strike policy, that Taylor had expressed the desire to leave the Party, and that it appeared that Taylor had come under the influence of the Trotskyites, had become a discredit to the Party, and should be expelled by the Party; information showing in substance that an official of the 12th Ward Branch, Erie County Communist Party, who referred to Charles Taylor as a former member of the Aircraft Branch, Erie County Communist Party, and as

later a member of the 12th Ward Branch, expressed the thought that Taylor should be expelled from the Party, [fol. 106] because Taylor had stopped paying dues and attending meetings, had been taking public positions in opposition to incentive pay, had participated in a work stoppage in his place of employment, and as an elected delegated to the UAW Convention, had voted against Communist Party candidates Frankenstein and Addes, and against incentive pay, and that Taylor had done these things contrary to advice given him; information in substance reflecting the existence of a Communist Party record reflecting that in or about November 1943 Charles Taylor, Book No. 3060, was expelled from the Erie section.

A second confidential source furnished information in substance showing that on or about July 1943 Taylor had agreed to meet an official of the Niagara Frontier Committee at Communist Party headquarters to discuss an important matter; information in substance showing that an official of the Niagara Frontier Committee, who referred to Taylor as the elected delegate from Local 501, UAW-CIO to the 1943 UAW Convention, expressed the thought that Taylor should be expelled from the Party.

Mr. Silard: Mr. Waldman, is there a written form of this that I could be examining as you read it? Do you have a spare written copy of this material?

Chairman Waldman: No, sir, but as soon as I finish reading it, I will be glad to sit down with you, and before [fol. 107] we proceed any further we will take a recess, and I will let the reporter read to you all the information, and you can write it down if you like. Will that be satisfactory?

Mr. Silard: Yes, sir.

Chairman Waldman: A third confidential source furnished information in substance showing that in or about October 1943 Taylor was expelled from the Communist Party.

A fourth confidential source furnished information in substance showing that prior to February 1945 Charles Taylor exhibited a letter to the source notifying Taylor of Taylor's expulsion from the Communist Party.

A fifth confidential source furnished information in substance showing that in 1943 the name of Charles Taylor,

1464 Michigan Avenue, was included in a list of names and addresses of new members of the 12th Ward Branch of the Erie County Communist Party; information in substance showing that the source had personal knowledge and information as follows: Charles Allen Taylor was a member of the Aircraft Division of the Erie County New York Communist Party about the summer of 1942 to the end of 1943, during which time Taylor was a toolmaker at Bell Aircraft, Buffalo; Taylor had attended four or five Communist Party meetings at headquarters, Erie County New York Communist Party, 75½ Chippewa Street, Buffalo; four or five Communist Party meetings had been held at Taylor's home at 523 Masten Avenue, Buffalo; and on several occasions [fol. 108] Taylor had paid Communist Party dues to Svea Katz, the secretary, Erie County Communist Party.

A sixth confidential source furnished information in substance showing that in or about July 1944 he had seen a list of names in the possession of a member of the Buffalo branch, Socialist Workers Party, of persons favorable to the Socialist Workers Party and eligible for the various executive positions at the Bell Aircraft Corporation, Local 501, UAW-CIO, and that this list contained the name Charles Taylor.

That, Mr. Silard, is the information of an evidentiary nature which we are permitted to reveal to you at the present time, in accordance with paragraph 4 of the review regulation.

[fol. 109]

EXHIBIT NO. 31 TO STIPULATION OF FACTS

AFTERNOON SESSION

Chairman Waldman: It is now 1 p.m., and Mr. Silard, you have had an opportunity to scan the matters of an evidentiary nature which have been introduced into this record?

Mr. Silard: Yes, I have.

Chairman Waldman: Do you have any comment to make?

Mr. Silard: Well, first I would like to say that I take exception to the words "matters of an evidentiary nature."

They are accusations and allegations. I don't know how anyone could call them evidentiary.

But I do, without going into that distinction—it would be fruitless—have a series of questions that I would like to address to the Board, in the hope that possibly I might be able to get an answer to some, and with that answer prepare some sort of defense to the charges which we have not to date put in, because manifestly in the present state of the record what was read into the record this morning doesn't enable us to defend or produce evidence or rebuttal to any extent whatsoever, except to have Mr. Taylor appear again and deny that he was a Communist Party member or held a card or paid dues, and it would be fruitless to have him do that again.

Now, it won't be necessary for you, Mr. Chairman, to tell me that it is the fourth paragraph that forbids you to [fol. 110] give me the answer, I will assume that if the Board declines to answer the inquiry it is because of the rules of the Board. It will save a little time that way.

First I would like to ask you, with respect to this entire reading this morning, when did the Board obtain the information which was read into the record this morning?

Chairman Waldman: Are you referring now to the evidentiary matter that was read into the record?

Mr. Silard: I am referring to the—I don't know what evidentiary matter you are referring to; I mean the statement that was read into the record this morning, which seems to include information reflected from six sources. When did either the statement or the information come into the possession of the Board?

Chairman Waldman: Will you go ahead and make all these requests.

Mr. Silard: Yes.

Chairman Waldman: And then we will give you an answer.

Mr. Silard: Well, I was going to ask: Did the Board have the information on the 19th of July, as a second question in the same vein?

Now I come specifically to these six confidential sources, and the next series of questions I have are addressed to all six. If the Board can answer any one of my questions with

[fol. 111] respect to even one of the six, or any more than one of the six, I would be glad to have an answer. I am not going to ask the same question six times—it would be a waste of time.

Each of these questions refers to all six confidential sources which are listed here. First, when the statement says "confidential source," "one confidential source," "a second confidential source," is the word "source" meant to describe a person, an informant?

Will the Board answer it now, or—

Chairman Waldman: No, I would like you to make all your requests.

Mr. Silard: All the questions?

Chairman Waldman: Yes, sir.

Mr. Silard: If source refers to an informant, does it refer in each case *to a living informant*; *and if in some* cases it does not, in which instances does it not?

Then I would like to know the name of the source. I presume that will not be revealed, but I would like to ask for the record the name of the confidential source or informant. If that cannot be told me, I would like to know whether the Board knows the name of that confidential source or informant.

I would like to know whether the Board has seen the informant in each instance.

I would like to know whether the Board has—

[fol. 112] Mr. Simms: Too fast for me.

Mr. Silard: I am sorry.

Mr. Simms: Has the Board what?

Mr. Silard: Whether the Board has seen the informant in each instance, or in any of the instances. By seen I mean talked to or interviewed or had contact with, even in writing.

Or if I may not be told that, I would like to be told whether the Board has asked any governmental agency to make him available to the Board.

Then we would like to know in each instance when the information from each particular confidential source, or informant was first given to the government, or any agency of the government.

Then we would like to know, inasmuch as these pieces of information relate to matters 14 years ago, why it is that

the informants did not furnish the information to the government until 1956, since presumably if it had been furnished, Mr. Taylor would have been subject to security charges and clearance problems.

I'd like to know whether the Board knows, if this information was not given until 1956 or thereabouts, why it was withheld from the government.

I would like to know to whom in each instance this confidential source or informant furnished the information in [fol. 113] the government.

I would like to know if the Board knows to whom it was furnished, if it was not furnished to the Board itself by the informant.

I would like to know if the Board knows any more about the informant than what is reflected in the statement.

I would like to know, specifically, if it does know more, whether it knows the name, whether it knows his occupation, whether it knows whether he has a prison record or is in prison, or stands to gain by giving testimony to this effect.

Then I would like to know whether any of the information reflected here is not the same information as that given by the informant on some previous occasion, that is to say, whether any of these informants have changed their testimony or added materially to their testimony.

I would like to know whether the information reflected here comes directly from the informing source, if that is an informant, or whether it comes to the Board indirectly, through some other person or persons.

I would like to know whether the Board knows whether the information comes directly from the source or informant, or indirectly from the source or informant.

And in that same vein I would like to know whether what was read into the record today is a summary of another [fol. 114] document, or an extract from another document, or an excerpt from another document; if not, is it the document itself; is the document read in here the same document, that is, which is available to the Board, and all that is available to the Board.

And if this is not the same document which is available to the Board, I would like to see the document that the Board has been furnished.

Then I refer to the words in each case, each of these six cases, "furnished information in substance showing." Now, I direct myself now to the words "information in substance." I would like to know what do those words mean, "information in substance showing." If I cannot be told what is meant by the words "in substance showing," then I would like to know whether the Board knows what is meant by "in substance showing."

Then I would like to know whether the Board has the information which is referred to as showing something in substance, or whether the Board only has the same knowledge as reflected here, that this is information which in substance shows such and such.

I would like to know, if this is not all that the government has, but it has more detailed information from which this is a summary, I would like to know in that instance whether the Board has access to it, the original information; and if it has not, or if I cannot be told that, I would like to know [fol. 115] whether the Board has requested to have access to the original information.

Now, that complets my general questions, Mr. Chairman. I can go on and ask the specific questions with respect to each of these sources now. I think I might as well do so. And I am going in inverse order, I will begin with the sixth confidential source.

In that sixth confidential source there is reference made to a list of names. I would like to know who made that list of names; I would like to know whether the Board knows who made that list of names.

I would like to know who was the member of the Buffalo Branch who had that list of names; and I'd like to know whether the Board knows who that member of the Buffalo Branch was.

I'd like to know what is meant by "persons favorable to the Socialist Workers Party;" I'd like to know whether the Board knows what is meant by "persons favorable to the Socialist Workers Party."

I'd like to know whether the Board has seen the list referred to; I'd like to know if the Board knows if there are any other names on that list.

I'd like to know whether the Board knows, in case there are other names on that list, whether any of those others on the list are now working for Bell Aircraft or have [fol. 116] security clearance.

I'd like to know whether the informant, the sixth confidential source, has access to the list; and I'd like to know whether the Board knows whether he has access to the list.

I'd like to know where the list is; and I'd like to know whether the Board knows where the list is.

I'd like to know whether the list actually exists now; and I'd like to know whether the Board knows whether it actually exists now.

I would like to know whether anyone in the government, this Board or anyone else, has sought to obtain the list; and I'd like to know whether the Board knows whether anyone in the government has sought to obtain the list.

That brings me to the fifth confidential informant or source, in which there is first a reference to a list of names and addresses of new members of some branch of the Communist Party. Referring to that list, I'd like to know, again, who made the list; and does the Board know who made the list.

I'd like to know who had or has the list; and I'd like to know whether the Board knows who had or has the list.

I'd like to know where the list is; and I'd like to know whether the Board knows where the list is.

[fol. 117] I'd like to know whether the list still exists; I'd like to know whether the Board knows that it still exists, or whether it still exists.

I'd like to know whether anyone in the government has sought to obtain the list; and I'd like to know whether the Board knows whether anyone in the government has sought to obtain the list.

Most importantly, I would like to know whether on this list there actually appeared the name "Charles Taylor;" I'd like to know whether the Board knows whether on the list the name "Charles Taylor" actually appears. This relates of course to the well-known problem that the Communist Party uses pseudonyms, and if the name were that of Charles Taylor, it obviously could not be the name of the respondent.

Then the second part of the fifth summary refers to a person, that is, an informant, who had personal knowledge or information, or has it; and I'd like to ask this: What is meant by "personal knowledge and information"? Does the Board know what is meant by personal knowledge and information?

When was this personal knowledge and information first disclosed by the informant to anyone in the government, and does the Board know?

Then I'd like to know whether the informant referred to actually attended the meetings referred to; I'd like to know whether the Board knows whether he actually attended the [fol. 118] meetings that are referred to.

I'd like to know whether the informant actually saw those dues paid to Svea Katz; I'd like to know whether the Board knows whether he saw the dues paid to Svea Katz.

I'd like to know where Svea Katz is; I'd like to know whether the Board knows where Svea Katz is.

I'd like to know if anyone at the Board has inquired as to where Svea Katz is.

I'd like to know if she has been questioned by anybody, to the knowledge of the Board.

And if so, I would like to know who questioned her.

That brings me to the fourth confidential source. I'd like to know whether the Board has seen the letter referred to there.

I'd like to know whether the Board knows its whereabouts.

I'd like to know whether this fourth confidential source has any other information to give the government concerning the respondent's affiliation with the Communist Party, alleged affiliation, or whether this is all that the source has to offer.

If he has no other information concerning respondent's membership in the Communist Party or expulsion therefrom, I would like to know whether the Board has inquired [fol. 119] under what circumstances the respondent would have shown such a letter to the informant.

I'd like to know when the informant first reported such a letter, and to whom, and whether the Board knows when it was first reported, and whether the Board knows to whom it was reported.

I'd like to know whether the Board has any other information whatsoever concerning the circumstances surrounding the exibition of this letter to the informant, other than what is reflected here.

That brings me to the third confidential source. I'd like to know the nature of the information showing that in or about October 1943 Taylor was expelled from the Communist Party. And if I can't be told that, I would like to know whether the Board knows the nature of the information reflecting this expulsion.

I'd like to know when this information was first reported, and whether the Board knows; and to whom, and whether the Board knows.

I'd like to know whether the source who was reporting has given any other information to the Board or to the government concerning Mr. Taylor's Communist Party membership or expulsion.

I'd like to know whether the Board has inquired of the government in that respect. And if it has not, I would [fol. 120] like to know why not.

That brings me to the second confidential source. I'd like to know the name of the official Niagara Frontier Committee who Mr. Taylor had agreed to meet.

I'd like to know whether the Board knows his name.

I'd like to know whether the informant in the second confidential source is the official.

I'd like to know whether the Board knows whether the informant himself is that official.

I'd like to know what the important matter was about which this meeting was supposed to be held; I'd like to know whether the Board knows what the important matter was concerning which the meeting was to be held.

Then, referring to the second official in that second confidential source, who is referred to, that is, an official of the Niagara Frontier Committee, is that the same official as the first official referred to? Does the Board know?

I'd like to know to whom that official expressed the thought, "expressed the thought," that he is supposed to have expressed; I'd like to know whether the Board knows to whom he expressed that thought.

I'd like to know whether he had expressed that thought to the informant himself; I'd like to know when the thought was expressed; I'd like to know whether the Board knows [fol. 121] either of those things, whether it was to the informant, and when it was expressed.

And that brings me to the first confidential source. And the first two items in that confidential source, "one confidential source," the first long paragraph, the first two items there concern a Communist Party record and a list of name and addresses marked "12th Ward membership, 1943, Mary Smith-President."

Now, concerning that record and concerning that list I would like to ask this:

Who made the record, and who made the list; and does the Board know?

Who had or has the list; and does the Board know?

Has the Board seen the list, or asked to see the list; and the same thing of the record?

Does the informant there referred to, this confidential source, have access to the list; and does the Board know whether he has access to the list?

Where is the list; and does the Board know where the list is?

Does the list still exist; and does the Board know whether the list still exists?

Has anyone in the government sought to obtain the list; and does the Board know whether or not anyone in the government has sought to obtain the list?

[fol. 122] I'd like to know, furthermore, what is the actual name in the list or the record. Is it "Charles Taylor," "Charles Allen Taylor," or is it a pseudonym, or just what?

I'd like to know whether the Board knows whether the name is actually the name "Charles Taylor," "Charles Allen Taylor," or a pseudonym, or what?

I'd like to know who Mary Smith is; I'd like to know whether the Board knows who Mary Smith is.

I'd like to know whether Mary Smith is a pseudonym; and whether the Board knows whether it is a pseudonym.

I'd like to know whether the Board has sought to question or have Mary Smith questioned by any other party.

That brings me to the second—really the third—item in this first confidential source, which is "information concerning an official of the Niagara Frontier Committee who had reproved Taylor for participating in a strike."

I'd like to know whether this official—I'd like to know his name; I'd like to know whether the Board knows his name.

I'd like to know whether the official is the same as the informant, that is, the source; and I'd like to know whether the Board knows.

I'd like to know whether the informant was present at the time of this reproval of Mr. Taylor; I'd like to know whether [fol. 123] the Board knows whether he was present.

That brings me to another official, the next item in that first confidential source. And that is "an official of the 12th Ward Branch, Erie County Communist Party, who referred to Charles Taylor as a former member of the Aircraft Branch," etcetera.

With respect to this official, I would like to ask again, what is his name; and does the Board know?

Is he the informant or the source referred to here; and does the Board know?

Is he the same official as the first official referred to immediately above; and does the Board know whether he is the same official?

I would like to know to whom he "expressed the thought" that Taylor should be expelled from the Party, et cetera; and I'd like to know whether the Board knows to whom he expressed that thought.

I'd like to know whether he ever expressed it to the informant here involved; and whether the Board knows whether he ever expressed it to the informant himself.

I'd like to know when it was expressed; I'd like to know whether the Board knows when it was expressed.

That brings me to the last item in the first confidential source, concerning a Communist party record, with reference to a book number and the name Charles Taylor.

[fol. 124] In respect to this record I'd like to ask again, who made it; and does the Board know?

Who had or has it; and does the Board know?

Has the Board seen it?

Does the Board have access to it?

Does the informant have access to it?

Does the Board know where it is; and where is it?

Does it exist; and does the Board know whether it exists?

Has anyone on the Board or in the government sought to obtain it for examination; and does the Board know whether anyone in the government sought to obtain it for examination?

Those, Mr. Chairman, are all the questions that I have concerning the six sources of information that were referred to this morning.

Chairman Waldman: Let's have a recess, and when we return we will have to give you a reply.

(Recess had.)

* * * * * * *

[fol. 125]

EXHIBIT NO. 32 TO STIPULATION OF FACTS

* * * * * * *

Chairman Waldman: Mr. Silard, the Board has had an executive session on this last request, and it is our conclusion that so long as the questions that you propounded are open on the record, we cannot conclude the hearing. We will, however, accede to your request to furnish replies to your questions in writing. We will then await your reply.

If in your reply you desire that the hearing be concluded, then the Board will conclude the hearing, and we will at that time attempt to make a speedy determination in this case, in accordance with the industrial review regulation.

But at the present time, with the questions on the record, the hearing has to be kept open until we know what our and your disposition is as to these questions.

Mr. Silard: May I ask, then, if there would be anything wrong, in the event that they are answered in writing—I understand that they may be answered in writing; is that correct?

Chairman Waldman: If you desire, we will answer them in writing.

Mr. Silard: Yes; well, in the event, then, that there were to be no further oral appearance here, would there be anything wrong with my making the closing argument at this

[fol. 126] time, on the supposition that this is the status of the record as it will be at the closing?

Chairman Waldman: We have no objection to your making the statement that you wish to be considered as the closing statement at the time the hearing will be concluded.

Mr. Silard: Fine. Well, I would like that very much.

* * * * * * *

[fol. 127] Chairman Waldman: Mr. Silard, in the future, when this hearing is concluded, the Board will proceed promptly to complete its determination of the case, in accordance with the review regulation.

For your information, the Board is well aware of the seriousness of its mission, and of the gravity of its responsibility. Among other things, it fully recognizes that in evaluating and weighing the information available to it, that Mr. Taylor did not have the opportunity to examine some of the evidence which has been presented against him, nor has he had the opportunity to cross-examine witnesses.

These proceedings have been conducted in accordance with the requirements of the aforementioned Industrial Personnel Security Review Regulations. Under this regulation, and within the limitations of national security, Mr. Taylor has been given complete information with respect to the derogatory matters involved in his case, and has been accorded a full opportunity to respond to this information and to furnish information in his own behalf.

We will now await your reply to our letter, which will be sent to you, in response to your series of questions, before the hearing will be closed.

[fol. 128] Mr. Silard: Thank you.

(Whereupon, the hearing in the above-entitled matter was closed.)

[fol. 129]

EXHIBIT NO. 33 TO STIPULATION OF FACTS

NEW YORK INDUSTRIAL PERSONNEL
SECURITY HEARING BOARD
45 Broadway
New York 6, N. Y.

TLW/ga

WHitehall 3-8000, Extension 76

August 11, 1958

Joseph L. Rauh, Jr., Esq.
1631 K Street, N. W.
Washington 6, D. C.

REGISTERED
RETURN RECEIPT REQUESTED

Dear Mr. Rauh:

Reference is made to the series of questions propounded by Mr. Silard which appear on pages 67 to 81* in the inclosed transcript of hearing held on August 1, 1958 in the case of Charles A. Taylor.

The questions are specifically directed to information of an evidentiary nature read into the open record, which has been summarised by this Board from information at its disposal from six confidential sources.

Careful consideration has been given to a study of these questions and it appears that they concern the identity of confidential sources of information, investigative techniques and disclosure of efforts made by the Board to assess the reliability and weight of the sources of the information.

Please be advised that the information already given to you from the six confidential sources has been done so to the extent possible, with due regard to the interests of the national security, as is provided for by paragraph 4 of Department of Defense Directive 5220.6, dated February 2, 1955, which states in pertinent part "no classified information nor any information which might compromise investigative sources or methods or the identify of confidential informants will be disclosed . . .". You are further advised that it is our standard practice and procedure in

* Printed herein at pages 105 to 114.

this or any other case to make every effort to present witnesses and documentary evidence and to test the reliability of information from investigative sources. You may be assured that this procedure has been diligently followed in this case.

When the hearing is concluded all of the classified information in the file will be considered by this Board with due regard to the fact that Mr. Taylor may have been handicapped in his defense by its non-disclosure to him or by his lack of opportunity to identify or cross-examine persons constituting sources of information.

Further consideration of Mr. Taylor's case will be held in abeyance pending receipt of your reply to this letter.

Very truly yours,

T. L. White
Executive Secretary

Incl:
copy of transcript

[fol. 130]

Exhibit No. 34 to Stipulation of Facts

CONFIRMATION

August 13, 1958

T. L. WHITE, EXECUTIVE SECRETARY
NEW YORK INDUSTRIAL PERSONNEL
SECURITY HEARING BOARD
45 BROADWAY, NEW YROK, N. Y.

YOUR LETTER DATED AUGUST 11 JUST RECEIVED. TRANSPARENT PRETENSE AT CONFRONTATION AND REFUSAL TO ANSWER ANY QUESTIONS WHATEVER CONCERNING SECRET INFORMANTS CONFIRM OUR POSITION THAT REOPENING OF CASE WAS FOR THE SOLE PURPOSE OF DELAYING OUR CASE IN COURT AND ATTEMPTING TO FIND SOME BELATED GROUND TO MEET IT. TAYLOR HAS DENIED EVERYTHING IN THE RECORD MANY TIMES; YOU APPARENTLY PREFER TO BELIEVE SECRET INFORMANTS ABOUT WHICH YOU KNOW NOTHING INSTEAD OF

LIVE MEN WHO STOOD UP AND TESTIFIED UNDER OATH. WE HAVE NO FURTHER EVIDENCE TO PRESENT IN THIS SHAM PROCEEDING NOR ANY CORRECTIONS TO MAKE IN THE TRANSCRIPT. WE ASK YOU TO DO JUST ONE FAIR THING COLON ISSUE YOUR DECISION WHICH HAS ALWAYS BEEN PREDETERMINED AT THIS TIME SO COURT ACTION CAN PROCEED FORTHWITH.

JOSEPH L. RAUH, JR.

[fol. 131]

EXHIBIT NO. 35 TO STIPULATION OF FACTS

ARGUMENT IN TAYLOR CASE WILL BE HEARD IN FEDERAL COURT HERE ON OCTOBER FOURTEENTH. FAILURE TO RENDER DECISION PRIOR THERETO IN THE FACE OF PREVIOUS ASSURANCES TO US THAT THERE WOULD BE NO UNNECESSARY DELAY COULD ONLY BE CONSIDERED FURTHER EVIDENCE THAT CASE WAS REOPENED SOLELY TO HARRASS TAYLOR AND DELAY HIS DAY IN COURT. JOSEPH L. RAUH, JR.

[fol. 132]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TAYLOR v. MCELROY, CA 1069-58

(Seal of Department of Defense)

OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON 25, D. C.

Oct 13 1958

Mr. Joseph L. Rauh
Rauh & Levy
1631 K Street N.W.
Washington 6, D.C.

Dear Mr. Rauh:

Reference is made to letter dated May 30, 1958, from Mr. Robert Dechert, General Counsel, Department of Defense.

whereby you were informed that the adverse decision in the security case of your client, Mr. Charles Allen Taylor, had been set aside and that the case was being returned to the New York Industrial Personnel Security Hearing Board for further proceedings. Also to the amended Statement of Reasons issued by the New York Hearing Board on June 19, 1958 and to the hearings on July 11 and August 1, 1958 wherein your client was afforded an opportunity to appear in person and with counsel for hearing.

The Hearing Board has now determined that, on all the available information, the granting of clearance to Mr. Taylor for access to classified defense information is not clearly consistent with the interests of national security.

Inclosed is a copy of the letter informing Mr. Taylor of the determination in his case, which is deemed self-explanatory.

Very truly yours,

s/ A. Tyler Port

A. Tyler Port
Director
Office of Industrial Personnel
Security Review

Incl.
Ltr to Taylor
dtd

[fol. 133]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TAYLOR v. MCELROY, CA 1069-58

(Seal of Department of Defense)

OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON 25, D. C.

Oct 13 1958

Mr. Charles Allen Taylor
269 Wheatfield Road
North Tonawanda, New York

Dear Mr. Taylor:

Reference is made to the letter dated May 30, 1958, from Mr. Robert Dechert, General Counsel, Department of Defense, whereby your attorney, Mr. Joseph L. Rauh, was informed that the adverse decision in your security case had been set aside and that your case was being returned to the New York Industrial Personnel Security Hearing Board for further proceedings. Also, to the Amended Statement of Reasons issued by the New York Hearing Board on June 19, 1958, and to the hearings on July 11, and August 1, 1958, wherein you were afforded an opportunity to appear in person and with counsel for hearing.

The Hearing Board has now determined that, on all the available information, the granting of clearance to you for access to classified defense information is not clearly consistent with the interests of national security.

In reaching this determination, the Hearing Board found that the allegations of the Amended Statement of Reasons, and the conclusions drawn therefrom, were true as stated in the following respects:

1. In about the summer of 1942 you became a member of the Communist Party, Erie County, New York. You were a member of the Aircraft Division or Aircraft Branch. For a while you were a member of the "B and

C" Branch and then, in about July 1943, you were transferred from the "B and C" Branch to the "12th Ward" Branch. Your membership Book No. was 3060. During your membership in the Communist Party, you had knowledge or reason to know of the subversion aims and purposes of the Communist Party. During the earlier portion of your membership in the Communist Party, you knowingly and actively cooperated with divers persons known to you to be members of the Communist Party; you paid Communist Party dues; sometimes paying them directly to Svea Katz, the Erie County Communist Party Secretary; you attended Communist Party meetings at headquarters at 75½ Chippewa Street, and at your own residence at 523 Masten Avenue, both in Buffalo, New York; on at least one occasion you distributed Communist Party leaflets at the Municipal Auditorium in Buffalo. Later in your period of membership in the Communist Party, you became actively and outspokenly opposed to certain Communist Party policies and Communist Party endorsed candidates for union office, and you stopped paying Communist Party dues and stopped attending Communist Party meetings, for all of which conduct on [fol. 134] your part you became the subject of discussion among Communist Party members and leaders. In the latter part of 1943, you were expelled from membership in the Communist Party. You had personal knowledge of this expulsion. The Communist Party, during the period of your membership therein, was an organization which believed in, advised, advocated and taught the overthrow by force and violence of the Government of the United States.

2. You completed and signed a "Personnel Security Questionnaire" dated 8 September 1954, a "Personnel Security Questionnaire" dated 2 July 1956, and a "Certificate of Non-Affiliation with Certain Organizations" dated 2 July 1956, each containing deliberate falsifications, misrepresentations, and omissions of material facts. These three documents were delivered to the Bell Aircraft Corporation, Buffalo, New York, your then employer, and each of them contained a statement certify-

ing that the entries "made by me are true, complete, and correct to the best of my knowledge and belief and are made in good faith".

a. By Item 25 of each Questionnaire, you were required to list, but omitted listing, your place of residence at 1464 Michigan Avenue, Buffalo, New York, where you resided during a portion of the years 1942 and 1943. These omissions were material.

b. By Item 26 of each Questionnaire, you were required to list, but omitted listing, your membership in the Communist Party, Erie County, New York, from about the summer of 1942 to the latter part of 1943. These omissions were material and deliberate.

3. You are not reliable or trustworthy because:

a. The findings set forth under paragraphs 1 and 2, above so indicate.

b. Your sworn reply dated 9 October 1956 to the Statement of Reasons issued under date of 10 September 1956, and your testimony given under the applicability of Title 18, Section 1001, of the U. S. Code, during the hearing held in your case before the New York Industrial Personnel Security Hearing Board on November 1, 2, and 14, 1956, contain, in substance, the following material statements which were deliberately and knowingly either false or misleading:

[fol. 135] (1) That you have never been a member of the Communist Party or of any branch of the Communist Party.

(2) That before your receipt of the Statement of Reasons issued under date of 10 September 1956 you had no knowledge of the subversive aims and purposes of the Communist Party.

(3) That you have not knowingly paid Communist Party dues.

(4) That you have never paid any money that to your knowledge went to the Communist Party.

(5) That you have not attended Communist Party meetings.

(6) That no group or organization other than your own local union sought your support for opposition to the "no strike pledge" during 1942 and 1943 while you were employed Bell Aircraft at Buffalo, New York.

(7) That your answer "None" to Item 26 of your aforementioned Personnel Security Questionnaire dated 8 September 1954 and 2 July 1956, insofar as such answer was intended to encompass membership in the Communist Party or any of its subdivisions, subsidiaries, and affiliates, was a truthful answer.

(8) That your answer "No" to questions 1 through 6 of your aforementioned Certificate of Non-Affiliation with Certain Organizations dated 2 July 1956, insofar as such answer was intended to encompass membership in the Communist Party or any of its subdivisions, subsidiaries, and affiliates was a truthful answer.

c. The information before this Board which formed the basis for the allegations contained in the Amended Statement of Reasons shows that the information relied upon combines a specific reference to one of the following names: "Charles Taylor" or "Charlie Taylor" or "Chas. Taylor" or "Charles T." or "Charles Allen Taylor" with one or more of the following descriptive items all of which, according to information before this Board, apply to you: (a) He was employed by Bell Aircraft Corporation, Buffalo, New York, during 1942 and 1943 and left Buffalo before 1945. (b) In his employment by Bell Aircraft in Buffalo, New York, he worked as a tool maker. (c) He was a member of Local 501, UAW-CIO, at Bell Aircraft in Buffalo, New York, and held office of union shop steward and union committeeman. (d) He resided at 523 Masten Avenue, Buffalo, New [fol. 136] York, except for that a short while in the

years 1942 and 1943 he left that address and resided at an address on Michigan Avenue, Buffalo, New York, and this address was 1464 Michigan Avenue, Buffalo. (e) In 1943, he took a leading part in a brief strike at Bell Aircraft where he worked. (f) In 1943, he was elected as a delegate from local 501 to the 1943 UAW-CIO convention. (g) At the 1943 UAW-CIO convention to which he went as a delegate, he voted in support of the Reuther Group. (h) At a local union meeting in July 1943, at which a resolution supporting Lewis' strike policy was passed, he spoke in favor of this policy on the union floor. (i) A photograph.

4. The findings set forth under paragraphs 1, 2 and 3 above furnish reason to believe that you may be subject to coercion, influence, or pressure which may cause you to act contrary to the best interests of the national security.

By separate letter, this Office has informed your attorneys of record, Messrs. Joseph L. Rauh and John Silard, 1631 K Street N.W., Washington, D. C. of this determination.

Very truly yours,

(Signed) A. Tyler Port

A. Tyler Port
Director
Office of Industrial Personnel
Security Review

cc: Mr. Jos. L. Rauh
Mr. John Silard

[fol. 1]

PLAINTIFF'S EXHIBIT No. 1

Before

NEW YORK INDUSTRIAL PERSONNEL
SECURITY HEARING BOARD
45 Broadway, New York 6, New York

Case No. OSD 56-198

HEARING

Thursday, November 1, 1956

RESPONDENT

Mr. Charles Allen Taylor

COUNSEL

Lipsitz and Greene, Esqs.,
35 Court Street,
Buffalo 2, New York
Richard Lipsitz, Esq., of Counsel.

MEMBERS OF THE BOARD

Mr. Raymond A. Waldman, U.S. Army—CHAIRMAN
Mr. George D. Simms, U.S. Air Force—Member
Cdr. Thomas K. Dunstan, U.S. Navy—Member

SECURITY ADVISOR

Mr. Ralph Leone

[fol. 3]

Transcript of Proceedings

Chairman Waldman: Let the record note that the Government and the subject and his attorney were present and ready for this hearing at 9:30 this morning and the delay until the present time of five minutes to eleven has been caused by the failure of the reporting service to provide a reporter at 9:30 as requested.

Mr. Lipsitz, I imagine we can save a lot of time this morning by not having to explain the proceeding, since you are familiar with our proceeding. You have appeared before us, and we had had the good fortune of having you representing some of your people here, and we know that you are familiar with the proceeding, so we can go into the matter that we have to immediately.

Mr. Lipsitz: All right.

Statement by Chairman

Chairman Waldman: On this first day of November, 1956, the New York Industrial Personnel Hearing Board, appointed by the Secretaries of the Army, Navy, and Air Force, is now ready to proceed with the hearing in the case of Charles Allen Taylor.

This is not a court of law and strict rules of evidence and court procedure need not be followed. This is an administrative hearing held for the purpose of affording you an opportunity to be heard and to permit the Board to inquire fully into the matters related to your case.

[fol. 4] You have the right to be represented by a lawyer or other representative and to present witnesses and other evidence in your behalf.

It is noted that Mr. Taylor appears with his attorney, Mr. Richard Lipsitz, of the law firm of Lipsiz and Greene, 35 Court Street, Buffalo 2, New York, and that the members of the Board for this hearing are as the place cards indicate; this is Mr. Simms, from the Department of the Air Force; Commander Dunstan, representing the Department of the Navy; my name is Waldman, and I am Chairman, and representing the Department of the Army; and at the extreme right is Mr. Ralph Leone, who is the Security Advisor to the Board.

You can assist the Board in arriving at a fair and just determination in your case by giving full and frank answers to all questions the Board may have, and by confining your attention to the matters related to your case.

The transcript to be made of this hearing will not include all material in the file of the case in that it will not include reports of investigation conducted by any of the

investigative agencies of the Government which must be held in confidence.

Neither will it contain information which might reveal the identity of confidential informants or the source of confidential evidence. The transcript will contain only the statements made, testimony given, and exhibits received in [fol. 5] open sessions of this hearing.

A copy of this transcript, less exhibits, will be furnished you or your representative without cost, if you request it.

Mr. Lipsitz, do you request a copy of the transcript being made of this hearing?

Mr. Lipsitz: Yes, sir.

Chairman Waldman: On September 10, 1956, the Director, Office of Industrial Personnel Security Hearing Review, notified Mr. Taylor of suspension of clearance for access to classified information based on the following statement of reasons:

1. Criterion (4).

a. Information before this Board indicates that you have had, and may still have membership in the Communist Party. This information is:

(1) In 1942 and 1943, for a period of about 18 months, and perhaps for a longer period, you were a member of the Communist Party, and during all or a part of that period, or perhaps for a longer time, you held Communist Party membership book (or card) No. 3060, evidencing your membership in the Communist Party. (The Communist Party has been designated by the Attorney-General of the United States, pursuant to Executive Order No. 10450, as having interests in conflict with those of the United States.)

(2) By a Communist Party transfer card dated on or [fol. 6] about 15 July 1943, you were transferred from "Branch and C" of the Communist Party to Branch 12" of the Communist Party; and on such transfer card it was indicated that your dues had been paid to and including April, 1943.

(3) During a period of about 18 months in 1942 and 1943, and perhaps during other years and for a longer

period, you paid regular membership dues to the Communist Party.

(b) Information before this Board indicates that at the time of your membership in the Communist Party, as aforesaid, you knew of the character, aims, and purposes of said organization, or had reason to know and should have known thereof; and—that you were and may still be, in sympathy with and in support of such aims and purposes. This information is:

(1) In 1941 and 1942, while residing in Buffalo, New York, or thereabouts, you signed Independent Nominating Petitions for the Communist Party, thus signifying a preference for Communist Party candidates in New York State elections.

(2) That contained in subparagraphs a(2) and 2(3), of paragraph 1.

(2) Criterion (10): Information before this Board indicates that you have a sympathetic interest in Communism. This information is that contained in paragraph 1 preceding.

(3) Criterion (16): In a Personnel Security Questionnaire signed by you and dated 8 September 1954, and de- [fol. 7] livered to the Bell Aircraft Corporation, Buffalo, New York, you failed to list the Communist Party in Item 26 thereof, which reads: "Organizational membership (list all organizations except labor unions in which you hold or have held membership)," and you indicated "none"; and you certified that the entries made by you in said questionnaire were true, complete, and correct to the best of your knowledge and belief, and were made in good faith.

In an attachment to your Personnel Security Questionnaire dated 2 July 1956, form DD 48-1, "certificate of nonaffiliation with certain organizations," also dated 2 July 1956 and signed by you, you answered in the negative the questions pertaining to whether you had ever been a member of, or had ever affiliated or associated with, any of the organizations listed in paragraph II, which said paragraph lists as the first item "Communist Party, USA, its subdivisions, subsidiaries and affiliates."

In view of the information set forth in paragraph 1 herein, it appears that by such omissions of material facts and by such negative answers you deliberately misrepresented that which you were required to disclose, to wit, that you were or had been a member of the Communist Party.

(4) Criterion (20): Information before this Board furnishes reason to believe that you may be subject to coercion, influence or pressure which may cause you to act contrary [fol. 8] to the best interests of the national security. This information is that contained in paragraphs 1, 2, and 3 preceding.

Is that the statement of reasons which was received?

Mr. Lipsitz: Yes, sir.

Chairman Waldman: Now, Mr. Lipsitz, I will take up next the Notice to Produce, which has heretofore been served on this Board which is dated October 18, 1956, in which you demand, on behalf of Mr. Taylor, that we produce certain information at this hearing, and I notice there are nine paragraphs in the Notice to Produce.

I would like, first, to know whether you are at this time making that demand?

Mr. Lipsitz: I am repeating the same demands that are contained in that, yes, sir.

Chairman Waldman: Well, we will have available for you a request which you make in paragraph 3, which refers to Personnel Security Questionnaire.

All other items, paragraphs 1 through 9, inclusive, except paragraph 3 cannot be complied with at this time by the Board since all of those items, except paragraph 3, are deemed by the Board to come within the prohibition of paragraph 4 of the Department of Defense Directive 5220.6, dated February 2, 1955.

Mr. Lipsitz: Does that complete your statement?

Chairman Waldman: At the moment, yes.

[fol. 9] COLLOQUY BETWEEN CHAIRMAN AND PLAINTIFF'S COUNSEL

Mr. Lipsitz: Do I understand that—let me just get my copy of the regulations out.

Do I understand that the copy of B-1, or the original, if you have that, of the so-called Communist Party membership card comes within the provisions of that paragraph in that it is information which might compromise investigative sources or methods or the identity of confidential informants, or do I understand—and I will add both questions—that you don't have any such instrument, or perhaps you have already given me your answer; I don't know.

Chairman Waldman: At this time, Mr. Lipsitz, in answer to the specific question which you have raised in reference to the Communist Party reference card, it is the same as the answer I gave originally to the entire Notice, in that that, as well, appears at this time to fall within the prohibition of paragraph 4 of the directive.

Mr. Lipsitz: I ask you the same question pertaining to the so-called Communist Party transfer card referred to in paragraph 1-a.

Chairman Waldman: I must give you the same answer, Mr. Lipsitz, at this time.

Mr. Lipsitz: I ask you the same question concerning the so-called Independent Nominating Petitions of the Communist Party referred to in paragraph 1-b, subparagraph 1 of the statement of reasons.

[fol. 10] Chairman Waldman: The same answer applies at this time.

Mr. Lipsitz: All right. In other words, at least at this time you are not prepared to tell us whether you have in your possession the originals or the copies of those instruments that I have referred to, or whether you don't have them in your possession? You are not prepared to tell me the answer to that question?

Chairman Waldman: No. I am prepared to tell you that this Board does not physically at this time have those cards in its possession.

Mr. Lipsitz: Nor the Independent Nominating Petitions?

Chairman Waldman: Exactly.

Mr. Lipsitz: And you understand my pursuit of these questions before we get started so that we are not becoming contentious about this. I have a purpose, obviously, in finding out as much as I can about this, and therefore, I would like to know whether or not the fact that you do

not have these physically in your possession at this time means that you are not going to consider the existence of such instruments, if there be such in existence in connection with this case?

Chairman Waldman: At this time it is our intention, and the statement of reasons would indicate, to consider [fol. 11] that these documents exist.

Let me go one step further, however, on that. Maybe it might clarify the issue for all of us.

To reveal the place of their existence at this time or to reveal the information which is classified at this time as to the place of their custody, or anything of that type, would be within the provision of paragraph 4 of the directive.

Mr. Lipsitz: Well, is it claimed that the Communist Party card bears the signature of Charles Allen Taylor, the subject of this hearing?

Chairman Waldman: Mr. Lipsitz, we have no information as to whether or not the signature of Mr. Taylor appears on the card or book alleged to be a membership card, or a membership book of Mr. Taylor in paragraph 1-a, subdivision 1 in the statement of reasons.

Mr. Lipsitz: All right. Just so that I understand, even though you don't have these documents in your possession at this time you, nevertheless, will consider those in connection with your decision in this matter, is that correct?

Chairman Waldman: We may if the necessity arises.

I will state for the record we may even request access to the card or book, or whatever the case may be.

Mr. Lipsitz: At the present time, however, they have been considered, I assume, in connection with this denial as it so says in the statement of reasons?

[fol. 12] Chairman Waldman: Exactly.

Mr. Lipsitz: Well, I merely would like to comment, of course, that we take exception to your answers to our demand to produce the information contained in this, what I have entitled my "Notice to Produce," and let's proceed on from that point.

Chairman Waldman: Well, yes, the exception is noted.

Mr. Lipsitz: I won't make any speech about how this

handicaps us. I think it is evident that we are handicapped by the failure to comply with this request.

Are you ready for me to proceed?

Chairman Waldman: I would like you to open, if you are so inclined at the moment.

Mr. Lipsitz: Only very summarily, and that is that the affidavit supplied by us, verified the ninth of October, 1956, in response to the statement of reasons which, I assume, is part of your record, states fully the position of Mr. Taylor, and I have nothing to add to that at the present time except, perhaps, the following:

During the course of our investigation we have come to the conclusion, also, that there may be another Taylor who was active in the same local union at about the same period with whom we feel perhaps there has been some confusion in regard to this Taylor.

The other Taylor's name is Alvin Taylor, A-l-v-i-n, and [fol. 13] we will have testimony concerning him and his activity and his relationships from witnesses that we will produce.

Aside from that particular aspect of it, we only repeat what is in the answer to the statement of reasons at this time, and it is evident from that answer that Mr. Taylor denies that he ever was or has been, or at the present time is a member of the Communist Party and will so testify when his turn comes to testify.

There are one or two other matters, however. In regard to paragraph b-1 of the statement of reasons, that is, 1-b-1, which alleges that he signed Independent Nominating Petitions of the Communist Party, we have given our answer to that in the answer to the statement of reasons.

In connection with that, however, I have inquired of the Erie County Board of Election Commissioners, which has the responsibility for maintaining the records and files in Erie County relating to all elections, and have asked for a letter, which they have promised me, but which, for a number of reasons—I suppose principally because this is the time of the year they are about the busiest—they have been unable to deliver to me yet, and this letter will state that customarily the records of that office are destroyed within one year, and particularly those records

pertaining to the Independent Nominating Petitions of any group or party, and I ask permission to submit that letter to you after this hearing that we have in New York [fol. 14] City since it is not available to me at this time.

Chairman Waldman: Of course you will be accommodated in that regard, and whenever the hearing is finally over you can make any request for reasonable extensions of time, and you will be granted such extensions.

Mr. Lipsitz: Among the witnesses who are not present here—and I thought I would like to present it to you at this time to explain why such a witness is not present—is the woman who was Mr. Taylor's wife at the time you apparently feel he was a member of the Communist Party. They have since been divorced, and although I have spoken with her and asked her if she would be willing to come on a voluntary basis, since obviously, both you and I know, we can't subpoena her, she has evidenced a lack of willingness or a reluctance to do so, and I have been unable to get her as a witness.

I only make this explanation as to why such a person that might have information is not available to this Board.

Chairman Waldman: It is noted.

Mr. Lipsitz: Other than that, we are ready to begin, and I will get my first witness.

Chairman Waldman: What is the sequence: will you have Mr. Taylor later on?

Mr. Lipsitz: He will be the last witness.

Chairman Waldman: Fine.

Mr. Taylor, before you testify, it is my duty to inform [fol. 15] you of the provisions of Section 1001 of Title 18, United States Code, which makes it a criminal offense punishable by a maximum of five years' imprisonment or $10,000 fine, or both, to make a false statement or representation to any department or agency of the United States as to any matter within the jurisdiction of any such department or agency.

Do you understand that, sir?

Mr. Eugene Taylor: Yes.

Chairman Waldman: Kindly give the reporter your name and residence address.

Mr. Eugene Taylor: 207 Riley.

Chairman Waldman: Is that in Buffalo?
Mr. Eugene Taylor: Buffalo, yes.
Chairman Waldman: Proceed.

Whereupon, EUGENE TAYLOR, was called on behalf of the Respondent, and testified as follows:

Direct examination.

By Mr. Lipsitz:

Q. You are the son of Charles Taylor, is that correct?
A. Yes.
Q. How old are you?
A. 27.
[fol. 16] Q. When were you born?
A. 1929, March 8th.
Q. Do you have any brothers?
A. Two.
Q. Any sisters?
A. None.
Q. How old are your brothers?
A. 25, I believe, and 22.
Q. And is your mother living?
A. Yes.
Q. Is she still married to your father?
A. No.
Q. Were they divorced, or what?
A. Divorced.
Q. Do you know when that was?
A. Well, they have been parted since about '43, I guess.
Q. They have been parted since about '43, and some time after then they were actually divorced?
A. They got divorced actually in about '45, I believe.
Q. You don't live with your father now, do you?
A. No.
Q. Do you have your own home and family?
A. Yes.
Q. Were you living with your father in the family home or apartment during the years 1942 and 1943?

[fol. 17] A. Yes.

Q. And you were at that time, say, in 1942, 12, going on 13, or 13 years old, is that correct?

A. Yes, sir.

Q. Do you recall where your father worked in 1942 and 1943?

A. Bell Aircraft.

Q. Hve you seen what is entitled the "statement of reasons" that the government has prepared in connection with this case?

A. No.

Q. I show you a copy of the statement of reasons and ask you—you haven't seen that?

A. No, I haven't.

Q. It has been discussed with you, however, what the charges are, is that correct?

A. The contents, yes.

Q. And you are aware of the fact that it is claimed that your father was a member of the Communist Party at least during a part of the period 1942 and 1943?

A. Yes.

Q. Now, were you close to your father during those years? I am addressing myself particularly to the area of 1942 and 1943, and thereabouts.

A. Yes, I was

[fol. 18] Q. he spend time with you taking you places?

A. Yes.

Q. Did you ever hear him mention in your presence anything about the Communist Party, or about Communism?

A. No.

Q. Either favorably or unfavorably?

A. Neither way, to my knowledge.

Q. What would you say was the primary interest of your father during those years in matters, at least, that he discussed at home or in your presence?

A. Well, he felt pretty strongly about union activities.

Q. Was he active, to your knowledge, at least based upon what he used to tell you at Bell Aircraft in the local union?

A. Yes.

Q. Did he spend a great deal of time in local union activities?

A. Yes.

Q. Did he ever bring any literature to your attention which he asked you to read?

A. No, never.

Q. Not of any kind?

A. No.

Q. Do you have any awareness of what it is claimed that the Communist Party's goals are or what it is supposed to [fol. 19] be striving for?

A. No.

Q. I am not asking if you are a student of it, or anything like that.

A. No, I don't. I mean it is Russia, I would say, represents it.

Q. Have you read about it in the newspapers?

A. Yes.

Q. You have a general idea, then, of the interests of the Communist Party?

A. Yes.

Q. Did your father ever discuss any ideas with you from which you, upon reflection at this time, at least, consider that he was trying to promote Communism with you, even if he never used the word?

A. No, never.

Q. Did he talk to you a lot about unions?

A. Well, he didn't talk to me too much about it. It was there in the house all the time, constantly.

Q. You mean there were conversations in the house all the time about it?

A. Yes.

Q. Did your father, if you know, ever have meetings—did your father ever have people to his house for meetings of any kind?

[fol. 20] A. Not that I can recall. I can recall a couple of fellows coming up there now and again.

Q. Would they sit around and have discussions with your father as they were around there?

A. A couple of times, as I remember. It was union activities.

Q. First of all, you heard them discuss certain things, is that correct?

A. Yes.

Q. What was the subject discussed?

A. Just union.

Q. Did your father ever have any books or literature in the house that you have any clear recollection of, at least?

A. Not along Communist lines, if that is what you mean.

Q. I mean, did he bring—did you have any books around the house?

A. No. I mean I had—he gave me one book—I believe I told you about it—to read.

Q. What was that?

A. The Moon is Down.

Q. By John Steinbeck?

A. Yes.

Q. You recall that book?

A. Yes.

[fol. 21] Q. And that is the only book that your father ever asked you or suggested you read?

A. That is right.

Q. How about any daily newspapers of any kind?

A. No.

Q. Nothing like that?

A. No.

Mr. Lipsitz: I have no further questions.

Chairman Waldman: Mr. Leone?

Mr. Lipsitz: Just one question.

By Mr. Lipsitz:

Q. Now, the things that you have testified about, do you have a clear recollection of these matters at the present time?

A. As I can remember; yes, I can remember them.

Mr. Lipsitz: Okay.

Cross examination.

By Mr. Leone:

Q. From 1943 until the present date what part of the time did you spend in the same household with your father?

A. Well, I believe I was with him for a while when he went to Vermont. That was in '45.

Q. Were you with him in '43?

A. Yes.

Q. And '44?

[fol. 22] A. Yes. I believe—no, not in '44; I wasn't with him.

Q. You were with him in '45?

A. Yes.

Q. For how long a period?

A. Well, I was there for about a year.

Q. And then—

A. I went into the Army.

Q. You went into the Army in '45?

A. Yes, under age—no, wait a minute. That was '46. I was with him in '45, and in '46 I went into the Army in January.

Then I was with him in '47, I believe—no, the latter part of '46 and into '47, and from that time on I don't think I have been with him since.

Q. The last time you resided in the same household was in 1947?

A. Yes.

Q. Mr. Lipsitz questioned you about the period 1942, 1941, 1942, and 1943.

Just generally, would all of the answers that you gave to Mr. Lipsitz also be applicable if we covered the period from '43 forward, that is, regarding discussion of Communist matters and meetings, and so forth, just generally?

A. Yes, pertaining to that time forward, too.

Q. In other words, to your knowledge, you have never [fol. 23] had a discussion with your father about Communism?

A. Never.

Q. Or Socialism?

A. He has never discussed any of it with me.

Q. And have you ever had any discussions with your father regarding any periodicals such as the Daily Worker, New Masses, anything of that sort?

A. No.

Q. Do you know whether or not your father has ever read the Daily Worker?

A. I don't know, really, to tell you the truth, whether he did or whether he didn't.

Q. Did your father have any associates that you have ever felt might have been sympathetic to the Communist Party or the Communist cause?

A. Well, not that I know about, no. I mean, I have heard since, just in the last couple of days—I have heard of, like Allie Brodose, but I have never known him to have any associates.

Q. Well, how does the name Allie Brodose come up?

A. Well, I heard it over here in the room, and I heard it up in the hotel.

Q. Did you know him?

A. No, I didn't. I met him, though, come to think about it, one time when they were going down, I believe to Wash-[fol. 24] ington Street, to the local union, I believe, at the time.

Mr. Lipsitz: "They," meaning whom?

The Witness: Well, there was several of them went down. I didn't know them all, but I believe that Brodose was present at the union at the time.

By Mr. Leone:

Q. Let's see if we can straighten this out. Before these proceedings did you ever consider this individual to be a Communist, or in sympathy with Communism at all?

A. No.

Q. You never did?

A. No. I never gave him a thought until these proceedings, to tell you the truth.

Q. Would you say that your father is generally interested in politics?

A. I wouldn't—you mean governmental politics—I would say no. You mean like government?

Q. Yes.

A. I have never heard him express any points of view one way or the other on it.

Q. His interests were, as you recall it, primarily in local union activities?

A. Yes.

Q. Can we restrict it to local union activities or national union activities?

[fol. 25] A. I would say local more than national.

Q. Outside of these proceedings have you ever had any reason to question your father's sympathies?

A. No.

Q. Never?

A. No.

Q. Do you recall any specific discussions that you might have had at any time with your father regarding any political issue?

A. No.

Mr. Leone: I have nothing further.

Chairman Waldman: Commander Dunstan?

By Commander Dunstan:

Q. You say you were born in 1929 and went into the Army in 1946. That makes you about 17 at the time?

A. Yes, just 17. I was 16 when I went in. I turned 17 after I got in.

Q. Where did you go to high school just before you went into the Army?

A. The last time I was in school was in Burlington, Vermont, in B.H.S.

Q. When was that?

A. Well, that was in '45. I quit school and I went to work. I worked for Bell Aircraft for a short time.

Q. When was that?

[fol. 26] A. That was in '46.

Q. And how long did you go to school in Burlington?

A. Oh, I only went for—I started, and I believe I went about three weeks, if I remember, and quit.

Q. Only three weeks at high school?

A. Yes.

Q. Where did you go to school before that?

A. Before that, in high school, I went to Semi-Vocational.

Q. Where is that?

A. Buffalo.

Q. When was that?

A. That was in '44.

Q. How about '43?

A. Oh, in '43 I was going to School 17. That was the first year of high, and that was as far as I went.

Q. That was in Buffalo?

A. That is right, yes, as far as I went to school in Buffalo.

Q. That was still School 17 in Buffalo?

A. Yes.

Q. How long were you in Burlington?

A. About a year.

Q. But you only had three weeks of school in that entire time?

A. That is right. I was working, and I decided to go [fol. 27] back, and I went for about three weeks and changed my mind and quit.

Q. Then you first moved to Burlington in '45, roughly?

A. Yes.

Q. When did your father move to Burlington?

A. How did he move?

Q. When?

A. I believe that was in '45, or '44, I believe it was.

Q. You are not sure?

A. I am not sure, no.

Q. But you definitely were living with him in Buffalo in 1942 and '43, is that correct?

A. Yes.

Q. You definitely were living in Buffalo with your father?

A. Yes.

Q. He was home every night, or almost every night?

A. Well, I wouldn't say he was home every night. Like I say, he was organizing or working with these unions.

Q. Well, he slept at home every night?
A. Oh, yes.

Commander Dunstan: That is all.
Chairman Waldman: Mr. Simms.

By Mr. Simms:

[fol. 28] Q. Did you ever see any material around the house which would have been evidentiary of the fact that your father might have had some attachment with the Communist Party; for example, any receipt for dues paid, or cards, or any matter of that nature?

A. No, never.

Q. Did you ever see any letters or anything lying around that carried the masthead of any of the Communist organizations, or organizations which are generally considered as Communist through their association with the Communist Party?

A. No, I haven't.

Q. Well, prior to your knowledge of this hearing and the showing to you of the statement of reasons did you have any belief, even the faintest type, that your father might have been at one time associated with the Communist Party?

A. No. The thought never even entered my mind. I had no reason to think it.

Mr. Simms: Nothing further, Mr. Chairman.

By Chairman Waldman:

Q. Mr. Eugene Taylor, do I understand that you finished public school as far as education is concerned?

A. Yes.

Q. And then had one year and three weeks of high school?

A. Yes.

Q. And then some time after—one year and three weeks?

[fol. 29] A. Not one year and three weeks; I just went three weeks.

Q. It was three weeks of your first year?

A. No, I went in Buffalo here.

Q. For how long?

A. I believe it was in April I went, and I almost finished the term. Then I was going to finish and go through school, and I changed my mind in Burlington.

Q. You never completed high school?

A. No.

Q. And you went into the Army after that?

A. Yes.

Q. Did you take USAFI, or any of these high school courses in the Army?

A. No, I didn't.

Q. When were you discharged?

A. I got discharged in '46, too, September.

Q. Was it honorable?

A. Yes.

Q. Did you have any education following your discharge from the Army?

A. Yes, I took a correspondence course from American School in Chicago.

Q. And this correspondence course that you took, did it have subjects such as economics and politics as a part of it—

[fol. 30] A. No.

Q. —or something of a different character?

A. No; it was just regular high school, an academic course, English and math.

Q. But you have some knowledge of Communism which you got from reading newspapers, is that right?

A. Yes.

Q. And do you think that you have the ability—answer this question if you think you can—to distinguish the aims, character and purposes of the Communist Party?

A. Yes, I think I could.

Q. Can you give me some of the things that you think are included in the aims, purposes and character of the Communist Party?

A. Well, they don't have a God, for one thing, and it would be my impression of it—it would be that they would want it to go world-wide; it would have to go world-wide eventually, unless it is stamped out, and it always impressed me as a dictatorship, and—I don't believe you have any say in the government as to how it would be run,

I mean, or anything like that. They tell you when to work and sleep and eat.

I guess that would be my impression of it, anyhow.

Q. Is it your opinion that in your contact with some individual you would know whether he was a Communist or [fol. 31] a Socialist or something else?

A. Yes. I met a fellow one time that I believed to be one.

Q. Why did you believe him to be?

A. Just generally conversation, the way he talked. He was all for Russia, for one thing.

Q. He was what?

A. He was for Russia, for one thing, talked about Russia all the time, how nice it was over there, and this and that, and I naturally had to label him a Communist.

Chairman Waldman: I have no further questions.

Mr. Lipsitz: One or two.

Redirect examination.

By Mr. Lipsitz:

Q. Are you in business for yourself now, Mr. Taylor?

A. Yes.

Q. What is your business?

A. Roofing.

Q. A roofing contractor?

A. Roofing contractor, yes.

Q. Do you employ people?

A. Yes.

Q. Do you recall when we discussed this matter before this hearing I asked you whether or not your father had ever had any discussions with you about unionism, and you [fol. 32] told me you had arrived at certain opinions of your own but that they are not the same as your father's?

A. Well, I don't agree with him right down the line on his points of view.

Q. He has, however, spent time with you—is this a correct statement—trying to persuade you to this point of view about unions, is that correct?

A. Yes.

Q. But has he ever spent any substantial time trying to persuade you to his point of view about any other subject matter?

A. No.

Q. Women, marriage, politics, or anything, is that correct?

A. No, about nothing, outside of unions. We have had some pretty good discussions on that point.

Mr. Lipsitz: That is all.

Chairman Waldman: You may be excused.

(Witness excused.)

Chairman Waldman: We will take our luncheon recess at this time and reconvene at one o'clock.

(Whereupon, a luncheon recess was taken.)

[fol. 33] AFTERNOON SESSION

Chairman Waldman: Who is the next witness?

Mr. Lipsitz: Joseph Rosmyslowski.

Chairman Waldman: Mr. Rosmyslowski, before you testify, it is my duty to inform you that Section 1001 of Title 18, United States Code, makes it a criminal offense punishable by a maximum of five years' imprisonment, $10,000 fine, or both, to make a false statement or representation to any department or agency of the United States as to any matter within the jurisdiction of any such department or agency. Do you understand that, sir?

Mr. Rosmyslowski: Yes, sir.

Whereupon, JOSEPH ROSMYSLOWSKI, called as a witness on behalf of the Respondent, was examined and testified as follows:

Chairman Waldman: Will you give your full name and residence address to the reporter.

The Witness: Joseph Rosmyslowski, Box 81C, Transit Road, East Amherst, New York.

Chairman Waldman: Thank you.

Proceed, Mr. Lipsitz, please.

Mr. Lipsitz: Before I begin, I note from looking over my notes of the morning session that I probably didn't make it clear that we also take exception to the fact that [fol. 34] we are not being confronted by any of the witnesses, or will we have an opportunity to cross-examine. Just for the record I want to make that clear.

Chairman Waldman: The exception is noted. The government will present no witnesses in this hearing.

Direct examination.

By Mr. Lipsitz:

Q. You are employed at Bell Aircraft; is that correct?

A. That's right.

Q. How long have you been employed there?

A. It's my 17th year.

Q. What kind of work do you do in the plant?

A. I worked intermittently at tool and die work, and as a lathe operator.

Q. Do you know Charles Taylor?

A. Yes.

Q. How long have you known him?

A. Since 1941.

Q. Have you ever been an officer or held any position in the local union at the plant?

A. Yes.

Q. Which positions or offices have you held, and approximately when?

A. I was chief steward from 1940 to 1943. And when I returned from the Armed Forces in 1946 I was active on [fol. 35] committees, and was elected as committeeman in 1949. And I was on the education committee for three years, and the chairman of that committee for one year.

Q. When was that?

A. I was chairman in 19—spring of '52 to spring of '53.

Q. Would you describe the physical layout of the Bell Aircraft facilities in 1941, that is, where the various plants in the Buffalo vicinity were located?

A. Well, the main plant up to 1944, I would say, was at the Elmwood Avenue.

Q. The Elmwood Avenue, Buffalo, New York, plant?

A. Right.

Q. Did that plant work a number of shifts in the early year of the war?

A. Usually three.

Q. Were you employed at that plant in 1941?

A. Yes.

Q. 1942?

A. Yes.

Q. 1943?

A. Yes.

Q. Were there other installations scattered around the Buffalo area?

A. Yes.

[fol. 36] Q. And did Charles Taylor work at the Elmwood Avenue plant at the times that you knew him in those years?

A. Yes.

Q. And can you remember approximately when and under what circumstances you first met Charles Taylor?

A. The first time I met him was at a union meeting.

Q. You can't at this time state the exact date of that meeting, can you?

A. No, I don't think so.

Q. Did you work with Taylor in the plant itself, or in connection with him?

A. Well, we worked on separate shifts: I worked the second shift, he worked the day shift.

Q. Did your union business bring you into contact with him at all?

A. Yes.

Q. All right, how did your union business bring you into contact with him?

A. Well, the top committee as a rule, and the top officers of the union are usually affixed to the day shift, the great majority of them; and he was the head man on days, in the same district as I was head man on nights.

Q. Well, you have got to explain to the members of this Board what the district was that you are talking about; how did the union divide the plant up for representation purposes?

[fol. 37] A. It divided the plant according to, first, the department you worked in, and—

Q. Who was a union official in the department?

A. Charles Taylor was the—

Q. No, forget about names; what was the title of a union official in the department?

A. Chief stewart was the highest one.

Q. But under him in departments were what?

A. Stewards.

Q. So in a department itself you would have stewards representing the workers; is that correct?

A. That's correct.

Q. And then over in other departments would you have another kind of official?

A. Yes, a committeeman.

Q. And did the committeemen have authority over what you referred to as the district?

A. Yes.

Q. So that you have a chief steward and you have stewards under him in the departments; is that correct?

A. Yes.

Q. And then you have committeemen?

A. Right.

Q. Who were over a number of different departments and the stewards in those departments?

[fol. 38] A. Yes, they coordinated functions between the lower officer and the top committee and president.

Q. Of the local union?

A. Right.

Q. Incidentally, that was Local Union 501, UAW; is that right?

A. That's right.

Q. The same union that is at the plant now?

A. That's right.

Q. And the functions of these various officials and stewards and committeemen were the administration of the contract from the union's side; isn't that correct?

A. That's correct.

Q. And the handling of grievances in connection with the same?

A. Yes.

Mr. Lipsitz: You will pardon the leading a little, but—
Chairman Waldman: That is all right, fine.

Q. Now, you got to know Charles Taylor, you said, in connection with your office and activity in the union?
A. Yes.
Q. You started to tell us, or maybe you did tell us, what his office was when you first got to know him?
A. He served intermittently as a chief steward and a [fol. 39] committeeman, but most of my relations with him were at the time he was a committeeman.
Q. What were you when he was a committeeman?
A. Chief steward on nights.
Q. Chief steward on nights?
A. Yes.
Q. How would your work bring you into contact with Charles Taylor, who was a committeeman on days?
A. Well, whenever it went beyond the first step, that is the foreman-worker relationship.
Q. You are referring now to a grievance or problem?
A. Grievance or problem. It is then taken out of the first step, and then taken up, and that is where the coordination of the committeeman comes in. And the grievances would be taken by me to Charles Taylor to forward them to the higher steps.
Q. Or to try to settle them?
A. In a top meeting or at his step, yes, sir.
Q. Did you at that time get to know Charles Taylor socially, that is, out of the plant; or was your relationship with him confined to the plant or the union meetings and things of that nature?
A. I would say mostly to the plant and the union meetings.
Q. You didn't associate with him on a social basis?
A. To a limited extent.
[fol. 40] Q. Not very intimately, however?
A. No.
Q. For your information, I think that this Board is somewhat familiar with the political groupings at the plant, because we have had a number of these cases before, but did you have such political groupings in 1941 and 1942 and 1943?

A. Yes.

Q. What were they referred to as, without reciting the different ones, what were they called usually?

A. Caucuses.

Q. And a caucus referred to a group of people who supported a certain group of candidates for election to union office, is that true?

A. That's right.

Q. When you first got to know Charles Taylor was he a member of any particular caucus, if you know?

A. When I first got to know him I don't think—I really don't know.

Q. All right, after you got to know him did you identify him at any time with a particular caucus?

A. Yes.

Q. Which one?

A. I think they called it "Unite and Win."

Q. Let me see if I can help you here. It looks as though your recollection is pretty good.

[fol. 41] Mr. Lipsitz: Do you want to see this now, or after I show it to you?

Chairman Waldman: You can show it to us afterward.

By Mr. Lipsitz:

Q. I show you a piece of paper with printing on both sides, and which is a little ancient, dated March 16, 1943; and on the top of it there is the inscription "Unite and Win," and then underneath in little print "For Victory."

Was that the caucus that you referred to, that you first identified Charles Taylor with?

A. Yes.

Q. Now, the date on this paper is March 16, 1943; was he however identified with that caucus before then, if you know—if you know?

A. I don't know.

Q. You don't know, but at least as of that time you fixed him in connection with the Unite and Win caucus; is that right?

A. Yes.

Q. Were you a member of that caucus?

A. No.

Q. Were you a member of another caucus at that time?

A. I was an independent.

Q. You didn't belong to a caucus, is that it?

A. Yes.

[fol. 42] Q. Was there a particular reason why you were not a member of the Unite and Win caucus, or any other caucus; or what was the reason?

A. Well, there was usually a—there usually was confusion in the campaigns, and I just laid off.

Q. You would rather run on your own name rather than with a group; is that correct?

A. That's right.

Q. Was there a principal person in the shop employed by the company who was identified with the Unite and Win Caucus?

A. Oh, yes, sir.

Q. What is his name?

A. Allie Brodose.

Q. Was he at that time an officer of the local union?

A. Yes, he was president, and I believe at one time a chairman.

Q. Chairman of the Bargaining Committee?

A. I'm not quite sure—I'm not sure—I just know he was president.

Q. Do you know when he was president?

A. From spring of '42 to spring of '43.

Q. Do you know whether Allie Brodose was a member of the Communist Party?

A. It was a common belief among all the unionists, the active unionists, that he was.

[fol. 43] Q. When did you first get to know Allie Brodose; do you remember, was it in 1942 or 1941, or when—or get to know of him?

A. Well, shortly before his campaign for the presidency —I'll put it that way.

Q. So you got to know him the latter part of 1941 or the beginning of 1942; is that correct?

A. Yes.

Q. Placing yourself back in those years, if you can, are

you stating now that there a lot of people who commonly thought at that time that he was a member of the Communist Party, or at least a Communist?

A. Yes.

Q. And you were one of those; is that correct?

A. Yes.

Q. Was this a fairly widespread impression in the plant?

A. Among the unionists.

Q. Among those that were active in the union; is that right?

A. Yes.

Q. Was it the same impression that all of the people in his caucus were also Communists or members of the Communist Party?

A. No, not.

Q. What was the impression that you had, and if it is [fol. 44] the same as the others, that the others had?

A. Well, we—the unionists had enough experience to know that there was a certain line that the Communist Party followed, and their members followed; and it was a common belief that about three or four people there were most likely members of the Communist Party; but the others were no different than I was.

Q. In respect to Communism, you say?

A. That's right.

Q. Were you ever a member of the Communist Party?

A. No.

Q. Did you have any association or sympathy with the Communist Party at any time?

A. No.

Q. Now, you said that there were two or three, or three or four—I forget what you said.

A. I would say about four.

Q. Who were in the Unite and Win caucus who commonly was thought to be Communists or members of the Communist Party; is that correct?

A. Yes.

Q. There were, however, a large number of people other than those three or four who were in that caucus; isn't that correct?

A. Oh, yes; candidates alone numbered about 15 or 20.

[fol. 45] Q. So that of the candidates in that caucus, only three or four were commonly known or thought to be Communists or members of the Communist Party?

A. Yes.

Q. Was Charles Taylor a candidate in that caucus, and if you—

A. Yes, I remember him running for a financial post. I'm not sure whether it was—

Q. Well, let's see if you can refresh your memory again, turning to the other side of this paper.

A. Treasurer.

Q. Does Charles Taylor's name appear?

A. Yes.

Q. As treasurer?

A. That's right.

Q. I see there are eight names opposite the various positions; are those the positions commonly known as the officers of the local union?

A. Yes, the executive board.

Q. The executive board, that's different from the committeemen or the top committeemen; isn't it?

A. That's right, the others are representatives.

Q. These people were officers of the local union?

A. Right.

Q. Other than Allie Brodoes in there, of these eight [fol. 46] names, is there anyone concerning whom the opinion was had at least by you that he too was a Communist, or member of the Communist Party?

A. Not on the executive board, no.

Q. Are you stating that this was not only your opinion but the common opinion?

A. The common opinion.

Q. Now, then, I gather that you say that concerning Charles Taylor, that you did not have the impression that he was a Communist or a member of the Communist Party?

A. No, I did not.

Q. We will come back to this in a minute, to ask you why you didn't have such an impression, but I want to go on to another field for a moment.

You mentioned that there were three or four—would you give us the names of the other three or four?

A. One that's almost definite was Anton Sustar.
Q. S-u-s-t-a-r?
A. Yes.
Q. Go ahead.
A. And of course Allie Brodose.
Q. Yes?
A. And he had a close associate named Alvin Taylor.
Q. Go ahead.
A. And there was a lady named Freda Werb.
[fol. 47] Q. W-e-r-b?
A. W-e-r-b.
Q. This paper is being held together with Scotch Tape. I now show you another—maybe we ought to mark these, so that we have some distinction, at this time.

Chairman Waldman: Sure, why don't you mark the first one,—well, will they be introduced as exhibits later?

Mr. Lipsitz: I am going to ask to introduce them, and then ask for leave to photostat them and substitute photostats.

Chairman Waldman: Fine, let's mark the first one Exhibit 1, the first sheet you were referring to, with the "Unite and Win." And as you go along we will—

Mr. Lipsitz: All right.

Chairman Waldman: Do you want to hand that to me?

OFFERS IN EVIDENCE

Mr. Lipsitz: Yes, I want to offer it now as an exhibit, and I ask for leave to withdraw it and substitute a photostatic copy.

Chairman Waldman: We will be able to work that out all right, sure. That is Exhibit No. 1. It is the issue of Tuesday, March 16, 1943, which is headed "Unite and Win for Victory." One sheet of paper. Marked Exhibit 1.

(Respondent's Exhibit No. 1 was received in evidence.)

By Mr. Lipsitz:

[fol. 48] Q. Now I show you what will be marked for identification, I believe, Exhibit No. 2, the Unite and Win for Victory dated March 16, 1943.

Chairman Waldman: All right.

Q. And referring to the back side of the paper, I ask you if the names that you referred to, Freda Werb and Alvin Taylor, appear in a little article on the right-hand side entitled "Notice."

A. Freda Werb appears and Alvin Taylor appears.

Q. Incidentally, were Exhibits 1 and 2 to your knowledge papers put out by the Unite and Win—

A. Caucus.

Q. —Brodose caucus.

A. The Brodose caucus.

Q. I gather from the prominent position of Mr. Brodose's photograph that they were supporters of him, without doubt?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Now I also note that there appear the names of Tom Page in the same article, Robert Siegler, Joseph Maitre, Al Geller, and Don Burns; do you know whether any of the others except Alvin Taylor and Freda Werb were considered to be members of the Communist Party or Communists?

A. No, they were not.

[fol. 49] Q. At least you have no impression that they were; is that correct?

A. No.

Mr. Lipsitz: I will offer this, and ask for the same permission to substitute a photostat.

Chairman Waldman: Sure. No. 2 is received, and will be returned at the close of the hearing for photostat purposes.

(Respondent's Exhibit No. 2 was received in evidence.)

Mr. Lipsitz: May I have No. 1 back a minute? I just want to identify somebody on there.

Chairman Waldman: Yes.

By Mr. Lipsitz:

Q. I am showing you now Exhibit No. 1, and on the rear side there is a little statement entitled "Let's look at the record of John Maturski." Who was John Maturski?

A. John—

Q. Who was he at that time, and tell us who he is now, too?

A. John Maturski at that time was a leader of—and builder of an opposing caucus, opposing to the Unite and Win caucus, and he ran against Allie Brodose, and defeated him.

Q. In 1943?

A. In 1943, yes.

Q. Is he still working in the plant?

[fol. 50] A. Yes.

Q. Did he take any position on the question of Communism at any time in this campaign, if you know?

A. Well, I don't know whether he made any publications on it, but I know he was a definite fighter.

Q. For or against?

A. Against Communism.

Q. Was he, would you say, one of the prime targets of Brodose?

A. Oh, of course,—yes.

Q. And his associates?

A. Oh, yes.

Q. Now I show you what I am asking to be marked as Exhibit 3 for identification, another Unite and Win for Victory, dated March 20, 1943, and I ask you if this is another one of the same caucuses' newspapers?

A. Yes.

Q. On the front side of this, in the middle of the page, there is a box entitled "Watch for these names,—"vote for these names." I don't know exactly how many of the names are on here, but of the ones on here can you tell us whether you have any impression that any of them were Communists or members of the Communist Party except the ones you have already named, that is, the four names that you gave us? Look it over, please.

A. Not outside of the four that I named, no, sir.

[fol. 51] Chairman Waldman: Mr. Lipsitz, pardon me for interrupting for a moment, but aren't Exhibits 1 and 2 exactly the same?

Mr. Lipsitz: No, I think they are different.

Chairman Waldman: They both look the same. We have been looking at them and they are both dated March 16, 1943.

Mr. Lipsitz: One is the 23rd, isn't it?

Chairman Waldman: No, March 16th.

Mr. Lipsitz: Oh, maybe those two are the same, then. I'm looking for—

Chairman Waldman: They both are alike.

Mr. Lipsitz: Well, that is correct, that is correct. That is my mistake.

Chairman Waldman: Well, we have no exhibit No. 2, then.

Mr. Lipsitz: No, we will mark the one we are referring to now as Exhibit No. 2.

Chairman Waldman: Wasn't that already marked Exhibit No. 3.

Mr. Lipsitz: All right.

Chairman Waldman: We will leave the one that is marked now as Exhibit No. 3, and the next time we have an exhibit we will mark it Exhibit No. 2. All right.

Commander Dunstan: We will strike out Exhibit No. 2. We will leave an opening.

[fol. 52] Mr. Lipsitz: Okay. And we are marking this—

Chairman Waldman: We have one which is the Tuesday, March 16, 1943 issue.

Mr. Lipsitz: We have got a No. 2 available; is that it?

Chairman Waldman: And the one we are looking at now is March—

Mr. Lipsitz: 23.

Chairman Waldman: Fine.

So the next time we have an exhibit it will be No. 2.

(Respondent's Exhibit No. 3 was marked for identification.)

By Mr. Lipsitz:

Q. My question was whether he has identified any others on there as Communists, other than the ones before, and his answer was no.

You are talking about the common impression in the plant, too, not just speaking as Joseph Rosmyslowski?

A. No, it was the common impression of those active in the union.

Mr. Lipsitz: I offer this as Exhibit No. 3.

Chairman Waldman: All right, Exhibit 3 is received, and it is the issue of "Unite and Win for Victory" of March 20, 1943.

(Respondent's Exhibit No. 3 was received in evidence.)

[fol. 53] By Mr. Lipsitz:

Q. Now I will show you what we are going to ask to be marked as Exhibit No. 2, which is a Unite and Win for Victory dated March 23, 1943; and I ask you whether this is one of the same series of publications put out by the same group?

A. Yes.

Chairman Waldman: All right, Exhibit No. 2 is received. It is the Unite and Win for Victory issue of March 23, 1943.

(Thereupon, the document above-referred to was marked Respondent's Exhibit No. 2 in evidence, the previous Exhibit No. 2 having been withdrawn.)

By Mr. Lipsitz:

Q. Before we got off on this identification of exhibits I had asked you, or rather I had suggested that we were going to come back to how you distinguished Charles Taylor from being a member of the Communist Party, or a Communist, even though a member of the same caucus; can you tell us some instances, if any, or reasons why you didn't identify him with the Communists?

A. Well, yes, his behavior on issues did not jibe with the Communist line at that time.

Q. All right, what was the Communist line in so far as

you knew it in your local union from Pearl Harbor on?
[fol. 54] A. Well, for one they—they wanted to institute all kinds of ideas to increase the amount of hours, the amount of production, by incentive pay. They were the originators and the biggest pushers of the incentive pay idea; and they—especially those four that I have mentioned—were for, strongly for what you might say peace at any price with the company at that time. They wanted to—well, they made statements such as "to heck with someone that was fired, we got to have production, we can't have any trouble."

And they were the originators and pushers of the no-strike pledge, to my knowledge, and they—although nobody among the leaders in the union was really against a no-strike pledge, they were against the way the Communists wanted it written and carried out.

Q. You have mentioned then, some of the principal goals and aims in your local union affairs that the Communists had at that time; is that correct?

A. That's right.

Q. What was incentive, what was their program for incentive pay; what did they want?

A. Well, the incentive pay idea originated in 1942, it was country-wide.

And the local people, such as Brodose, wanted to institute incentive pay, which is the payment for the amount of pieces put out by a worker, rather than payment by the [fol. 55] hour. And depending on his own ability and skill.

Mr. Lipsitz: Now I'd just like to interrupt at this time, gentlemen, just so that the record shows in the proper place that—and I think perhaps this is going to become more and more evident—that a great deal of our testimony is going to be designed to show you how on these issues, which we will identify with the goals of the Communists in the local union, Charles Tayor was in opposition.

I only want to make that statement now so that if there is any wondering or questioning about why we are talking about these things, it should become evident from the very beginning about this.

And also I would like to make this comment, because it perhaps might be a natural reaction by some of the Board

members; we are not—at least we are not in this hearing concerned with whether the goals of the Communist Party in respect to these matters were pro-American, un-American, patriotic, or disloyal. We only present them to you as facts, and to show how we hope the testimony will show Charles Taylor opposed them on these issues. Again I make the comment at this time rather than waiting for some future time, so as to relieve any of you gentlemen of any questions you might have about the patriotism of any of our witnesses, many of whom will tell you that they were opposed to the things that during the war perhaps a majority of Americans were for, including the Communists, such [fol. 56] as incentive programs, no-strike pledges, et cetera.

By Mr. Lipsitz:

Q. Now, you mentioned something about extra hours; what was the Communist program with respect to extra hours?

A. The way I remember it, they wanted to institute a mandatory 10-hour day, and the idea was also advanced in our shop.

Q. The no-strike pledge you have already commented about; is that right?

A. Yes.

Q. Do you know of your own knowledge any stand that Charles Taylor took at any time on the question of the incentive program?

A. Well, he was definitely against the incentive pay program, and he was known as one of the better orators of our union at that time, and took strong stands on the union floor against it.

Q. Can you recall any meetings in particular as to when this issue may have come up?

A. I can't place any local union meetings, but I remember the Buffalo October 1943 convention of the United Automobile Workers—it was held in our town.

Q. Do you remember that he took a position—

A. Against incentive pay.

[fol. 57] Q. Now, I show you what will be marked, I hope, for identification as Exhibit No. 4, and ask you if you can identify what that is. Look on both sides of it, please.

A. That is the slate of candidates for the convention of 1943.

Q. Are you talking about an international union convention?

A. UAW, yes.

Q. The international union's convention?

A. Right.

Q. And Charles Taylor's name appears on that, is that correct?

A. Yes.

Q. Do you know the other names that appear on there, and if there are any on there that you are not familiar with, tell us such person's name?

A. I—I knew Walter Padgett, John Maturski.

Q. Wait, tell us the ones that you didn't know, or that you didn't recognize.

A. Oh. Frank Jelley and Arthur Rugg, I didn't.

Q. You don't recognize those names?

A. No.

Q. You have no recollection about them one way or the other?

Mr. Leone: I didn't hear that last name.

Mr. Lipsitz: "You have no recollection—"

[fol. 58] Mr. Leone: I didn't hear that last name.

Mr. Lipsitz: Arthur Rugg.

By Mr. Lipsitz:

Q. You have no recollection about them or who they were, one way or the other; is that correct?

A. No.

Q. Was this a slate of delegates identified with the Brodose group, or in opposition to the Brodose group?

A. No, this is in opposition.

Q. What is one of the ways that you know they were in opposition to the Brodose group, not from the names, but from what appears on this exhibit?

A. Well, the Progressive Union indicates that it was the progressive caucus.

Q. That was another caucus?

A. Yes.

Q. In opposition to the Unite and Win?

A. Win.

Q. How about on the rear side, is there anything which would indicate the opposition to the Communist program?

A. "We oppose piece work," is stated here on the program.

Q. That is what you are talking about as the incentive plan; is that correct?

A. Yes.

Q. Now, on this copy there is pencilled in here at the [fol. 59] bottom "six—O'Donnell." His name doesn't appear on the printed portion of this; who was O'Donnell?

A. He was—he was an active unionist. I don't remember if he held any other office.

Q. Would you gather from this that he was one of the winners in this, although his name didn't appear in the slate?

A. He's one of the winners, but he was not on this slate.

Q. Were the others who have Nos. 1, 2, 3, 4, 5, and 7 in pencil, other winners; does that indicate other winners?

A. Winners, yes.

Mr. Lipsitz: I offer this as Union Exhibit No. 4, and ask permission to withdraw that for photostats.

Chairman Waldman: Accepted as Exhibit No. 4.

(Respondent's Exhibit No. 4 was received in evidence.)

Chairman Waldman: Can you date this card I see?

Mr. Lipsitz: Well, it's undated, but I think the witness from his testimony indicated for what convention and when held these people were running. If not, perhaps you could repeat it.

The Witness: The reason I remember it clearly is because Charlie Taylor got the high vote, got the top.

By Mr. Lipsitz:

Q. For what year was this convention?

[fol. 60] A. October of '43.

Q. Do you recall when these people were running?

A. Approximately three or four weeks before that date, I'd say.

Q. Now, let's see if we can't refresh your memory a little here—I've got it around some place.

Well, I show you an issue of the Local 501 News dated September 15, 1943—I'm not having this marked for identification—on the second page of which there is an article stating that seven delegates were chosen to represent Local 501 at the Eighth Annual UAW Convention to be held in Buffalo October 4th; does this now place the time of election with any greater degree of particularity?

A. Yes, yes.

Q. When would you say the election was held, then?

A. September—

Q. All right, at least before September 15, is that correct?

A. That's right.

Q. Now I show you what I will ask to be identified as Union Exhibit No. 5, and ask you if you can identify this leaflet—and look it over, because it consists of four printed pages.

Do you know what that is?

A. Well, it's a slinger to back up the no-strike pledge.

[fol. 61] Q. Who issued it; do you know who the people were?

A. Well, Allie Brodose, and Fred Boschert are signed here. They were a committee to uphold the no-strike pledge.

Q. Who was Fred Boschert?

A. I don't know him.

Q. You don't know, but this was the same Brodose who was previously talked about?

A. Yes.

Q. Do you know when this was published, or prior to what event, at least, it was published?

A. I think it was prior to the convention of 1943.

Q. Well, just so that you explain to the Board how you associate this with this, at the beginning of it it talks about the UAW conventions; isn't that correct?

A. Yes.

Q. And it also talks about a speech to be delivered on Tuesday, January 9th, although it doesn't give the year?

A. That's right.

Q. Is that correct?

A. That's right.

Q. Is it your recollection that this was probably at least published before the 1943 convention of the UAW?

A. Yes.

Q. Now, there are a number of matters in here that I am not going to ask you to go into, except to ask you, based upon [fol. 62] that, whether you know this pamphlet was the Communist line pamphlet, or not. There is a reference made in the second page, "Labor Action"; do you know what they were referring to?

A. Labor Action was the official organ of a party—I believe they called them the "Workers Party" at that time.

Q. Was the Brodose Communist group in opposition to them?

A. Yes, yes.

Q. Was it a very strong opposition?

A. Well, I never gave it too much attention at that time. I—I know he was in opposition.

Q. Did their literature attack the Labor Action?

A. Yes.

Q. And the people that supposedly supported Labor Action?

A. Yes.

Mr. Lipsitz: I offer this as Union Exhibit No. 5.

Chairman Waldman: Accepted. No. 5 is an exhibit which is a pamphlet entitled "It's Yes for Progress."

Go ahead.

(Respondent's Exhibit No. 5 was received in evidence.)

By Mr. Lipsitz:

Q. Did you have any personal experience in regard to any grievance that you yourself were involved in?

Chairman Waldman: Mr. Lipsitz, I thought we would just get the record straight on something—perhaps you will [fol. 63] probably welcome the correction. You have been offering all of these as union exhibits—I know it is probably from force of habit.

Mr. Lipsitz: Yes, the exhibits—it's unconscious.

Chairman Waldman: I bring it to your attention for whatever it is worth.

Mr. Lipsitz: Yes, it's unconscious.

By Mr. Lipsitz:

Q. I had asked you if you had any personal involvement in a grievance in which you had contacts with Charles Taylor?

A. Yes. Well, yes, I was fired at one time by the—

Q. When were you fired?

A. July 14, 1943.

Q. So that we don't get into cluttering matters, I don't think the Board is interested in the merits of your case, that is, whether you were justly or unjustly fired; so confining yourself, however, to a short description of how you were fired, will you explain to the Board what happened at that time. If they are interested in the merits, they of course will feel free to examine you about it.

A. Sometimes corporations cooperated with unions, but they had individuals who sometimes looked to take out a grudge on a unionist, or—or who liked to hide behind the policy of the union, which at that time was of course always to try to settle things.

[fol. 64] And after writing about 30 grievances or so, they answered them all identically and very sarcastically.

Q. Are you talking about grievances you wrote?

A. Yes.

Q. Not involving yourself, but about people you represented—right?

A. Right. The toolmakers, mostly.

And then after writing a whole group of about 30 more, they were bottlenecked, and they hired supervisors from out of the state, and workers thought that was slighting them, because we had some wonderful mechanics.

And finally the thing that precipitated a walkout was when they hired an automobile salesman, who—whose only trade, other than automobile salesmanship, was sheet metal, as a supervisor over toolmakers.

And when the toolmakers asked him questions about tools or dies, he laughed it off by saying, "Charge it to my education, fellows, I got myself a soft job." He says, "Don't be mad at me."

And although they weren't mad at him personally, the workers were so hot over this that that finally precipitated a walkout.

Q. Now, was that in the department of which you were an employee and—

A. Yes.

[fol. 65] Q. And also over which you were chief steward?

A. Yes.

Q. On your shift?

A. Right.

Q. And go on.

A. And I knew it was the policy to always carry a hot issue to the top officers of the union at that time, and although I tried to convince them to postpone it, they were hot, and I—of course I didn't think that I should stay in while everybody else walked out—that would not very honorable—and as a last resort I took off my representative's button and walked out. I was the last one to leave the department, but I walked out with them.

Q. What happened as a result?

A. The company fired me for negative leadership.

Q. Was there another worker who was fired with you at the same time?

A. James Schuetz.

Q. Did he occupy or hold an office, too?

A. No.

Q. But they nevertheless selected the two of you and fired the two of you; is that correct?

A. We were chosen as—as soon as the walkout occurred the workers got together outside, and thought that it should be fair enough to send somebody in right away, in case they [fol. 66] wanted to settle the issue.

And being as I was no longer chief steward as far as they were concerned, because I removed my button to walk out, they nevertheless chose me as one of two ambassadors to go back in.

Q. And the other one was Schuetz?

A. The other one was Schuetz.

Q. It was after that that the two of you were fired; is that correct?

A. Yes.

Q. Incidentally, is this the same James Schuetz who has a number of years ago been involved in a security case?

A. Yes.

Q. And he was ultimately cleared, is that not correct?

A. Yes.

Q. How does Taylor fit into this grievance?

A. Well, frankly, when Charles Taylor got in on this grievance, he stated that he was—that he intended to have us back to work, and he intended to go as far as necessary to get us back to work, even if he had to go the limit.

Q. Getting who back to work, the two of you?

A. The two of you.

Q. Incidentally, how long did the workers stay out of the shop?

A. They returned each day, and walked out eight days in [fol. 67] a row.

Q. When he was referring to going to the limit getting the two of you back, what was meant by that?

A. He meant that he was going to get the day shift to support us in the same department, and then, if necessary, involve the whole plant.

Q. All right, now, at the time did Allie Brodose involve himself in this grievance?

A. He certainly did. He became bitter enemies with Charlie Taylor, because he told them, "To heck with Schuetz and Rosmyslowski, they can go find another job."

Q. Well, was—

A. He says, "We—we can't afford to interrupt production, he says, "we have got to have production here at any price."

Q. Was there then an open battle between Charles Taylor and Brodose over this issue?

A. Yes, it was a very hot one. Brodose was twice as large, but verbally it was a very hot battle.

Q. Incidentally, did your case go to arbitration, and if so, what was the result?

A. We went to arbitration, and we won the case, very clearly, with back pay.

Q. Are there any other incidents that you can recall involving Charles Taylor's position pertaining to local union affairs, and Brodose's?

[fol. 68] A. Well, there was another firing, for one.

Q. Who was that?

A. Bert Rowe.

Q. R-o-w-e?

A. Yes.

I don't remember all the details of his firing, but Brodose took the same position on him.

And that took place in approximately December, 1942, because I remember the arbitration case was settled in January 1943.

And Charlie Taylor took the same position in defense of Bert Rowe as he did in my defense. And Brodose was in opposition to it, and wanted to slip over it peacefully.

Q. Do I take it, then, on the issue of supporting you and Schuetz, and supporting Rowe in his discharge, that Taylor, with others, I assume, on the one side was willing to get the people to take action to support the discharged employees?

A. That's correct.

Q. Whereas Brodose opposed any such action being taken?

A. That's right.

Q. Were there any other incidents that you know of?

A. I think we have mentioned the incentive plan and the 10-hour day—they differed on that.

[fol. 69] And they differed on the no-strike pledge.

Q. Well, now, tell us about that.

A. Well, to my knowledge there was no one in the UAW against a no-strike pledge, but there was a large number of people who were against the no-strike pledge the way it was written.

Q. Do you recall the particular reasons why it was considered by some objectionable the way it was written?

A. Well, mostly because either the companies as a whole or individuals in the company, the responsible individuals of corporations, hid behind the no-strike pledge to take out grudges on individuals, or to push the union around, try to browbeat our contract and our rights.

Q. Were the people whom you identified as Communists or members of the Communist Party for no strike regardless of the cost?

A. That's correct.

Q. And is it your testimony that other unionists who were active felt that if it was warranted—

A. We should—

Q. —you should take strike action?

A. We should strike in defense of our contract.

Q. Do you recall a program known as the "equality of sacrifice program"?

A. I remember the title of the program brings memories. [fol. 70] I don't remember all of the details. I think one of them was the limitation on income, and wage freeze.

Q. Well, the equality being, then, the elimination of income on the part of ownership or capital, and a wage freeze to be accepted by working people?

A. Yes.

Q. Is that right, the unions?

A. That's right.

Q. Was this program pushed by the Communists in the union?

A. Definitely it was, yes.

Q. Do you know whether or not Taylor took a position on this equality of sacrifice program?

A. He took a strong position against it.

Q. Do you recall any meetings at which an effort was made by the international union to get the local unions to give up pay for double time?

A. There was a meeting. I don't remember the date, but there was a meeting of international representatives, and they asked different officers and leaders of locals whether they would go for that.

But I think Charlie Taylor was in that meeting, to my knowledge.

Q. Do you know whether this program was pushed by Brodose?

[fol. 71] A. Yes.

Q. And do you know what position Charles Taylor took on it?

A. In opposition to it.

Q. Shortly thereafter is it not true, however, that by governmental decree there was a ban on double time; do you recall that?

A. Yes, that's right. Yes.

Q. Did Charles Taylor ever talk to you about Communism?

A. No.

Q. About the Communist Party?

A. Oh, yes, he talked about the Communist Party when he got into this fight with Brodose. He called him quite a few names, including mentioning of the Communist Party.

Q. Well, was it in a derogatory sense towards Brodose and the Communist Party?

A. Yes, very much so.

Q. "This fight," meaning the fight over the support of Schuetz and Rosmyslowski—

A. That's correct.

Q. —and their grievance?

A. Yes.

Mr. Lipsitz: I have no further questions.

Chairman Waldman: May we go off the record.

(Discussion off the record.)

[fol. 72] Chairman Waldman: You have completed at least for the present with Mr. Rosmyslowski, right?

Mr. Lipsitz: Right.

Chairman Waldman: Let's take a ten-minute break so we can have a chance to go over these documents, and so we can have a basis for examining Mr. Rosmyslowski.

Mr. Lipsitz: Right.

(Recess had.)

Chairman Waldman: Yes, Mr. Lipsitz.

Mr. Lipsitz: Before you examine Mr. Rosmyslowski, I have reference to some of the off-the-record discussion we had, and perhaps you might want at the time to get some of it on the record,—at least I am going to make it part of my argument at the end—but in connection with it I'd like to point out two articles which appear in the United Automobile publication, which was the publication of the international union. I have, as I explained to you, the only existing complete files of for the years in question.

I am going to ask for leave to read it.

Chairman Waldman: Go ahead.

Mr. Lipsitz: It appears in the issue of September 15, 1943 at page 3, under the caption, "Daily Worker and Detroit News back corporation stand."

The following item appears:

"Support for General Motors Corporation's proposal to [fol. 73] introduce piece work in its plants under the fancy name of 'incentive pay,' came to the corporation from two assorted sources last week. The Detroit News, whose editorial policy has been consistently anti-labor in recent years, ran no less than three editorials in one week denouncing UAW President Walter Reuther for his opposition to piece work. During the same period the Daily Worker, the organ of the Communist Party ran five articles denouncing Reuther. In one article Earl Browder, Secretary of the Communist Party, repeated the demand that Reuther must be eliminated from the labor movement because of his opposition to 'incentive pay.'"

Now, this I read to you to illustrate the proposition that Walter Reuther, who though one of the officers of the international union, and whose name appears in that Exhibit No. 5, and who at the time was in charge of the General Motors department, that is, in charge of negotiating contracts with General Motors, was being attacked by the Daily Worker, which we all know to be the official organ of the Communist Party in the United States, for being opposed to incentive pay plans, the same plan for which in this local union Charles Taylor and others were in opposition, and Allie Brodose was in favor.

In another issue of September 1, 1943, to illustrate to you the attitude and the feelings of the second top officer, George F. Addes, Secretary-Treasurer, of the UAW, at page 7 of that issue under a column entitled "Secretary [fol. 74] Addes says"—I don't want anybody to feel that I am reading this out of context, and I am not; and I will show it to you for examination, but the article is too long to read in its entirety.

He devotes, however, the better part of about a column to condemning what he calls baiting, and the kind of baiting he is talking about is as follows:

"Baiting of any kind or character of a good trade unionist is a vicious practice. We care not whether it is Catholic-baiting, Jew-baiting, Red-baiting, et cetera, et cetera, et cetera." And he repeats this same grouping of four kinds of so-called baiting throughout this article.

That is to illustrate that as far as this officer is concerned—and we propose to show you that the press also at the time—and I'm not inferring that they were Communists or weren't Communists, that isn't my purpose—nevertheless had common ground with certain people in this labor union, and the ones that we are concerned with in this local union, in condemning those who opposed Communists or Reds, as we also call Communists.

Now, I would like, when you feel that you have the time, to show you this, so you can yourselves read it and get the feel of this attitude that existed among certain groups in this union.

Chairman Waldman: All right, we may have a look at that later.

[fol. 75] Mr. Leone, do you wish to inquire?

Cross examination.

By Mr. Leone:

Q. Can you explain to the Board how it was that Mr. Taylor, a member of the Unite and Win caucus, was elected on what appears to be a platform different from the Unite and Win platform?

A. Well, he—

Mr. Lipsitz: Excuse me, elected to what position? Are you talking about this Exhibit No. 4, with the convention delegates?

Mr. Leone: Yes.

Mr. Lipsitz: Okay.

The Witness: Well, you see, the convention at that time was held every 18 months, and Executive Board officers were elected in the spring of each year. And he ran on the Unite and Win ticket and lost, I believe in the spring of the year, for treasurer. He lost.

But then—well, I guess this was after they became bitter enemies with—I mean, they were very emotional state of being bitter enemies, they definitely never came together again under any circumstances.

And he ran for the convention, which comes later in the year, in the fall of the year.

Q. To what do you attribute, if there was, this falling [fol. 76] out between Taylor and the Brodose and the Unite and Win group?

A. Caucus changes are very common in—in a local union; men switch from year to year.

However, with Brodose I would say it was a series of—a series of opposite positions which led to the break, and finally when I was fired the final argument took place, and they became enemies. That was in July of 1943.

I'd say Brodose's position concerning my firing is the final thing that separated them for good.

Q. Did you ever have a discussion with Mr. Taylor on this particular subject that you are speaking of now, specifically the falling out between him and Brodose as a result of your dismissal?

A. Well, the fight took—took place in front of me, the big argument took place in a tavern, I think it was. We had a meeting in a tavern at which Allie Brodose happened to be there, and they argued right in front of me.

Q. Would you tell the Board what the discussion was like?

A. Well, they used a lot of rough language, and Charlie Taylor said—well, it's very long ago, but he—to give you the general idea of what he said, he would say something like this: "When one union brother gets fired for a cause that's not good enough for me, I'll fight for him even if I have to strike."

[fol. 77] And Allie Brodose kept bringing up the line which was popular at that time.

Then they started to call each other names, and the argument became more senseless then, but—

Q. During this discussion, or any other at this particular time, did the question of Communism come up in any of this name-calling?

A. Yes, I think so. I think—

Q. Would you tell the Board what you recall about that?

A. I don't recall the exact words. He was just using the word "Red."

Q. Who was using the word Red?

A. Charlie Taylor, in—in swearing on Brodose.

Q. And using it as a term applicable to Brodose?

A. Yes.

Q. Do you recall what Brodose said in return to that, to refute it?

A. The argument at that point was just a batch of name-calling, and he didn't actually refute—he didn't say anything sensible to refute it, just stuff like dirty language.

Q. Were there any statements made by Brodose that would indicate that the name-calling might have also been in a sense applicable to Mr. Taylor?

A. (No response.)

Q. In other words, the references to—

[fol. 78] A. No.

Q. —who were Communists in the group?

A. No, actually the argument centered so closely to the issue at hand, that they didn't get into that. It was all—all about Schuetz and myself.

Q. And the merits of the case?

A. Yes.

Q. Now, up until this time had Charlie Taylor and Brodose been friendly?

A. They started to have arguments before this. On the incentive plan was the biggest argument they had before this.

Q. When did that arise?

A. The incentive plan was an argument which lasted from the time Earl Browder originated it in 1942, about early summer of 1942, I guess, up until it reached its climax in the 1943 convention.

And all this time Charlie Taylor was against the incentive plan; so was Walter Reuther, as they just pointed out.

Q. Would you mind telling me whether or not you felt, and whether that represents the opinion of others, that say in the spring of 1943 Taylor had the backing of the Unite and Win caucus group?

A. I recall there was one time that he appeared—I don't know for sure if it was the treasurer election that spring, but there was one time he actually went to people and [fol. 79] told them not to vote for him. I don't remember the exact—

Mr. Taylor: It was—
Mr. Lipsitz: No.

By Mr. Leone:

Q. And about when in relationship to the spring election or the fall election would this have been?
A. Well, I--I would say it was in relation to his running for treasurer. I would guess that—I'm not—I wasn't sure. But I do remember that he at one time appeared on a slinger, and actually went to people and asked them not to vote for him.

Chairman Waldman: What is a slinger?
The Witness: A leaflet, or a—those little things that you saw with names on, where a group unites to—
Chairman Waldman: You mean like Exhibit No. 4 or Exhibit No. 5?
The Witness: Yes, yes, yes.
Chairman Waldman: A card?
The Witness: And they actually went to people and asked them not to—not to give him a vote.

By Mr. Leone:

Q. In March of 1943 his name appears, though, as a candidate for the position of treasurer?
A. That's right, yes.
[fol. 80] Q. On the Unite and Win platform?
A. Yes.
Q. And is it your testimony now that you are not sure whether at this time, March 16th, he was actually anxious to get this particular position?
A. I associate my thoughts with the fact that that was the position that he was asking people not to vote for him for.
Q. Now at this time, as I understand your testimony, you were an independent; is that right?
A. Yes, up to late fall, 1943. And at that time I started

to organize a new group of people who were independents. We decided to bring some of ourselves together, people who had no associates in any parties and held no discriminations. We wanted to get a good group of boys together.

And before—we won, by the way, almost a clean sweep. But I couldn't partake in it, because I was drafted at that time.

Q. Did you ask Mr. Taylor to join that group?

A. I think Mr. Taylor went to another facility at that time, in Vermont, the ordnance division of Bell Aircraft. Or somewhere near there, somewhere around Christmas of 1943 or early '44. He asked for a job there, I think. I'm not sure.

Q. What was your position with this Unite and Win caucus?

[fol. 81] Mr. Lipsitz: What do you mean "his position"? Do you mean his opinion about it, or his actions in relation to it, or—

Q. Were you running for office at the same time?

A. As an independent.

Q. What position did you take with regard to the Unite and Win caucus?

A. I did not campaign for or against full tickets at that time, in order to preserve my reputation as an independent, but I was against Brodose.

Q. You were against Brodose and—

A. And I was for—

Q. But does it follow that you were against the Unite and Win caucus?

A. I believe there was a man on there I campaigned strongly for, George Buell. I don't know if his name appeared there. I campaigned very strongly for him, I think.

Q. What was that name?

A. George Buell. I remember campaigning for—for George Buell, and against Brodose. And whether he—

Q. Did you—

A. —appears on that I forgot.

Mr. Lipsitz: Does he name appear on that exhibit? I think it does. He was running for vice-president, I think.

The Witness: He may have been in their group at one [fol. 82] time, I don't remember.

By Mr. Leone:

Q. I don't see it, but anyway—

A. But those are the names that stand out for me. I campaigned strongly for George Buell, because he was on my own shift. I knew him well, and he was of an independent nature, an independent thinker, and had no friends in any political parties.

Q. Did you campaign for Taylor?

A. Yes.

Q. You campaigned for Taylor?

A. Oh, yes.

Q. And I am speaking now of the time of March 1943.

A. I campaigned for him for the convention, and I believe I—I did campaign for some time for him in March 1943, yes.

Q. At that time how well did you know Taylor—you indicated that you knew him because of his position in the union—I am speaking of your social contacts with him; did you ever visit his home?

A. No.

Q. And meet any of his family?

A. I have met his wife on a couple of occasions, but—

Q. Would that be at union functions, usually?

A. No, in neither case was it at a union function, but [fol. 83] we only met by accident at night, and—and talked to each other, and that's as far as it went.

We were not close associates, personally, as you would probably want to know.

Q. You have testified in response to questions asked by Mr. Lipsitz that Mr. Taylor was not one of the individuals, was not one of the individuals included in the group who were deemed to be, were considered to be either Communists or sympathetic to the Communist cause?

A. That's correct, he was definitely not to be considered by the active unionists in the union—he was definitely not considered a Communist, or follower.

Q. And do you base that upon anything specific; did you have discussions with other individuals, so that you—

A. Well, let's—

Q. Let me complete.

A. Oh, sorry.

Q. So that you were able to say "that as a result of several discussions with so many people I was advised that they did not consider him to be a Communist"? Or what is the basis?

A. Well, that would be about the correct description. When a fellow gets active in a union, it takes him about—well, depending on who he is, several months to see the lines of every—of everything the way it lines up, on [fol. 84] caucuses and political influence, and so on. And —and what the people who are active in the union think about each case.

And although people have Red-baited him, they themselves openly stated that he is not one.

Because one of the curses in unionism is that people sometimes Red-bait each other for—just to win an election, and they can't win any other way, they hit below the belt. That's one of the curses among our labor movement.

Q. What you are giving me now is an evaluation that goes back before March of 1943?

A. Yes.

Q. And not after March 1943? In other words, I want your opinion and the opinions that you have reflected here of others as they existed before March 1943.

A. Oh, Charles—Charles Taylor was always considered an independent thinker, from 1941 right up to now.

Q. That is what I want to know.

A. Yes.

Q. Whether there was a change in attitude?

A. Well, the attitude of the active people always was that he was an independent thinker, and that he was not a Communist. Now or ever.

Q. Besides the Unite and Win caucus, was there any other caucus?

A. Well, yes, the one that Maturski organized to defeat [fol. 85] Brodose.

Q. What was that caucus known as?

A. I think it was "Independent Progressive" they called themselves. I'm not sure of the name.

Q. Independent Progressive caucus?

A. Something like that.

Q. Why would Mr. Taylor have joined the Unite and Win caucus and not the Progressive caucus?

A. The caucus that Maturski organized was being organized when the downfall of Brodose was already a hope of most of the active unionists, I think.

He—in other words, at the time Brodose won I don't think Maturski's caucus was of any organized value.

But at the time he was defeated it was very powerful, the group. And they defeated Brodose, and he challenged the election, and—and when he saw that his popularity was waning with the membership, he substituted, by some special permission—I still don't know why—but he substituted his close associate Alvin Taylor to run the second time, and Maturski beat him too in the runoff—in the—well, it would be the runoff, yes, because there was one election, then they challenged it, and there was a question of whether Maturski was president or not. And then they ran another election shortly thereafterwards, in which Alvin Taylor was substituted for Brodose's name, and he [fol. 86] was beaten, too, by Maturski. It was a powerful group, then.

Q. I think it is difficult for me to understand. I'd still like you to clarify if the issues were clear-cut at that time between the Progressive group and the Unite and Win group. It's difficult for me to understand how it was that Taylor was with the Unite and Win group, whereas from your testimony I get the impression that his sympathies were with the Progressive group—or am I wrong in that conclusion?

A. Well, first of all I'll state that Charlie Taylor was an independent thinker, he didn't care who he argued with on an issue.

But as for his reason of joining one caucus or another, that's something that people just do in a union, and why I couldn't answer for them.

Q. I'd like, if I may, to go over some names with you, and I'd like for you to indicate to the Board whether or not you know these people, and what you know about them?

A. All right.

Q. Peter Grant?
A. I don't know.
Q. Frank Herron?
A. I do not know him.
Q. Charles Doyle?
A. I don't know him.

Mr. Lipsitz: Excuse me, are you asking if he knows [fol. 87] them, or whether the names mean anything to him?

Q. Has ever heard of them. Whether the name means anything to him.
Do these names mean anything to you?
A. They don't ring a bell.
Q. Vincent Fantazzo?
A. No.
Q. Clara Lester?
A. Clara—
Q. Clara Lester?
A. No, I don't know. No.
Q. Same Weisman?
A. I couldn't associate the name with anything, although the name sounds familiar.
Q. The name sounds familiar to you?
A. Yes.
Q. But you don't associate anybody with it?
A. No.
Q. George Lohr?
A. No.
Q. Jim O'Connor?
A. No.
Q. I heard the name O'Donnell; what was his first name?
A. Frank O'Donnell.

Mr. Lipsitz: Are you asking him the same question [fol. 88] concerning that name?

Q. No, I just wanted to know if it was possible it was the same individual.
Freda Werb?
A. Yes.
Q. And what do you know about Freda Werb?

A. Well, I know that she was commonly regarded as a follower of the party line and the Communist Party line—and I'd say that a minority of the active unionists definitely stated to each other that she was a Communist member.

Q. A minority of the unionists?

A. Of the active unionists stated definitely that she—that they think she was a Communist Party member.

Q. Did you ever have any discussions with her?

A. Yes.

Q. And was that your conclusion?

A. It was my conclusion that she followed the line.

Q. And was it your conclusion as a result of discussions with her?

Mr. Lipsitz: That she—

A. That she followed the line?

Q. Yes.

A. Yes.

Q. And to your knowledge, how well did Taylor know Werb?

A. Charles Taylor?

[fol. 89] Q. How well did Charles Taylor know Werb?

A. To my knowledge, I don't know. I don't know if he knew her at all.

Q. Did you ever see them in each other's company?

A. No. You see, Freda Werb at the time I knew her was on the second shift, and Charles Taylor was on the day shift.

Q. Wouldn't you however get together at union functions, so that all of you or most of you were there at the same time?

A. Oh,—well, to be frank, I stayed away from her.

Q. You stayed away from her?

A. Yes.

Q. That wasn't my question.

A. I tried to—that is, except in the line of duty.

Q. My question was: What association, if any, do you have between Freda Werb and Charles Taylor?

A. None.

Q. Did you ever have any discussions with Mr. Taylor regarding Communism?

A. No. Not—not as a subject of discussion, though, except that I of course heard the name-calling and—and that he was against them. But I never sat down to discuss it as a subject, because we were too interested in the exact issues.

Q. For example, did you ever ask Mr. Taylor whether or not he was a Communist?

A. No, I didn't think it necessary, I never considered [fol. 90] him—nobody else did—so I just didn't bother. It's just like being with your own relative, or something that you are quite sure of.

I mean, there are some people in the union, you're—you're almost accurate the way I found it in most cases, you associate with them for a while, you can be quite accurate in knowing that they are influenced by a party, or are members of a certain party. I have found through experience that you can be quite accurate that way.

For instance, Jim Schuetz, who was a very close associate of mine, naturally I'd never ask him if he was a member of the Communist Party, because I knew he wasn't. As a matter of fact he was chairman of the Socialist Party.

Q. But on the other hand this person wasn't a member of the Unite and Win caucus?

A. Who?

Q. This Jim Schuetz was not a member of the Unite and Win caucus?

A. Oh, no, he was independent at that time.

Q. But Mr. Taylor was. See the difference?

A. Yes.

Q. Did you ever hear Mr. Taylor's name associated with the Socialist Workers Party?

A. No.

Q. What?

[fol. 91] A. No.

Q. You know that there was—

Mr. Lipsitz: Just a minute, I am going to ask if this is within the statement of reasons, or are we now going beyond the statement of reasons? Because if we are, I would like to know about it.

Chairman Waldman: We are not going beyond the statement of reasons, Mr. Lipsitz, we are just trying to find out what Mr. Lipsitz knows about Mr. Taylor.

Mr. Lipsitz: Well, all right.

Chairman Waldman: I think that's proper—

Mr. Lipsitz: If you think it is, you are going to--

Chairman Waldman: If we should find that the answer would be yes, we might amend the statement of reasons.

Mr. Lipsitz: That's obviously why I want to know about it.

Chairman Waldman: Yes, obviously; but I think we have the privilege of at least finding out how much he knows about the man.

The Witness: I never heard of the Socialist Workers Party until I returned from the Armed Forces and found out that they were in power, that they actually had a couple of officers, same as Brodose, who got a hold on our union. Up to then I never even heard of the—the name.

By Mr. Leone:

[fol. 92] Q. And after you returned from the service you never associated him with the Socialist Workers Party?

A. No.

Q. Or any of the individuals who were associated with it?

A. No.

Q. With the Socialist Workers Party?

A. I never associated him with them.

Q. Did you ever hear of the name Svea Katc?

A. No, sir.

Q. At the time of your difficulty because of the walkout—

A. Yes.

Q. —were there any union meetings where you got together to discuss the pros and cons of that particular issue?

A. Yes, the international representatives called at least once that I remember.

Q. Did you—

A. It was a—

Q. Yes?

A. A Mr. Wakins and a Mr. Gray at that time, I believe, who called these meetings and attended them with us.

Q. And you attended?

A. Yes.

Q. And Mr. Taylor attended?

A. Yes.

[fol. 93] Q. Was Mr. Brodose there?

A. No, the way I remember it he was not.

Q. Could you explain why he wouldn't be there?

A. Well, at—at the time I was fired he was already been defeated on paper, although he challenged the election, you see. So he was more or less dying away.

Q. Then the representatives from the Progressive caucus, Maturski—

A. Maturski.

Q. —would have been there?

A. Yes.

Q. Did Maturski support you?

A. Yes.

Q. Did Taylor support you?

A. Yes.

Q. And were there any speeches made at that time, did anyone express his opinion?

A. Well, the—the only speech I remember was the one Maturski made at the meeting with the United States conciliator, and the company, because I had the minutes of that meeting, and therefore I read it and know exactly each word he said. Outside of that I don't remember any words.

Q. But you recall Taylor getting up and supporting you?

A. Yes.

[fol. 94] Q. At that particular time?

A. Yes.

Q. Was there a person by the name of James Connors present at that particular meeting; does the name mean anything to you?

A. No, it doesn't mean anything to me.

Mr. Leone: I have nothing further.

Chairman Waldman: Commander Dunstan?

By Commander Dunstan:

Q. Mr. Rosmyslowski, did I understand you correctly when you stated in response to Mr. Lipsitz's questions that you were fired on the 14th of July, 1943?

A. Yes.

Q. From Bell?

A. From Bell Aircraft.

Q. That was the start of an eight-day walkout?

A. No, one walkout. They called it negative leadership. Then the other walkout took place in my defense, and in Schuetz's defense—eight days after the firing.

Q. And the reason for your walkout was what?

A. The original walkout?

Q. You personally walked out for what reason?

A. I walked out to—because I would consider it honorable—dishonorable to remain in there alone.

Q. Dishonorable to whom?

[fol. 95] A. To my fellow workers.

Q. Not to the country?

A. Well, in the union we are usually bound by unity, and it is customary for each man to stick together.

When they all walked out, I walked out last. I took my button off, and I did it.

Q. Did you consider at that time that the loyalty lay to the union or the United States?

Mr. Lipsitz: I object to that question, and I think it is a very unfair question. They don't have to be in the alternative. I think it is perfectly consistent that a man can think that he is loyal to his country and to his union.

Chairman Waldman: Objection sustained.

Mr. Lipsitz: That means you don't have to answer that question.

By Commander Dunstan:

Q. You were out for one day; is that correct, just one day—

A. Half, half day.

Q. Half of one day?

A. Yes, approximately. I don't know the exact number of hours.

Q. Did Mr. Charles Taylor walk out?

A. No, he was on a different shift. He was on the day shift.

[fol. 96] Q. But he told you, if I am not mistaken, that he would walk out unless you were reinstated; is that correct?

A. He told me that he would ask the top officers to take action, and go the limit if necessary to get us back, because we were unjustly fired.

Q. Well, now, is he going to go to the top officers of the union or the company?

A. The union.

Q. And they in turn will take it up with the top officers of the company; is that correct?

A. Naturally, yes.

Q. You were working on a different shift from Mr. Taylor, weren't you?

A. That's correct.

Q. Throughout the 17 years that you have been with Bell?

A. No, just at that time, up to the time that I was drafted, which was January of '44. And I think at that time, shortly before that, he was transferred to the ordnance division of Bell Aircraft, in Vermont.

Up to that time I worked nights, and he worked days.

Q. So during the period 1941 to January 1944, the time of your draft for military service, you didn't see Mr. Taylor at all outside of union activities, outside of working hours; is that correct?

A. Well, I would forward all my grievances to the—that [fol. 97] were going to the higher steps through him.

Q. But you never saw him?

A. Yes, yes, why, I—

Q. When did you see him?

A. At 4:30.

Q. When he was coming on and you were going off, or vice versa?

A. Yes, I was coming on and he was leaving.

Q. About how long would you see him then?

A. Oh, for a few minutes each time that we had an issue or a grievance.

Q. And you stated you had many grievances?

A. Well, over a period of time there was naturally bound to be many.

Q. So then is it fair to state that you might have seen him for one or two minutes every day for a period of months?

A. It would be more than one or two minutes, and it would be—

Q. I said a few minutes.
A. —very other day for the entire period.
Q. But you never saw him outside of those few minutes?
A. At meetings.
Q. You said you didn't go to many meetings.
A. At union meetings.
Q. I thought you said you didn't go to union meetings.
[fol. 98] A. I never said that.

Mr. Lipsitz: I think he said he avoided Freda Werb at union meetings.
Commander Dunstan: I thought he said he avoided union meetings.
Chairman Waldman: Let's ask the witness about union meetings.

By Commander Dunstan:

Q. Did you go to every union meeting that you could possibly attend?
A. Every one.
Q. And Mr. Taylor was also there; is that correct?
A. Yes.
Q. Where were those meetings held?
A. In the beginning, about 1941, we used to hold them in a hall on Fillmore and Winslow, which was located over a tavern.
Then we had no contract, to my knowledge, but held them catch-as-catch-can, mostly in the Polish Cadets' Hall, it was called, in North Buffalo, and in another hall they called Dory's Hall.
Up to the time I was drafted I don't believe we had any contract with anyone outside of the hall on Winslow where we met steady. Otherwise, we met catch-as-catch-can, including a number of meetings in a smaller auditorium, of [fol. 99] the large Memorial Auditorium in Buffalo. They have smaller halls in the auditorium, and we met in those at times.
Q. In what auditorium?
A. In Memorial Auditorium in Buffalo.
Q. Any meetings in restaurants, or anything like that, bars, taverns?

A. Well, the union office at that time was located next to a tavern. I believe it was a vacated store of some sort, or double store, and there was a union office on one side of a partition and a small meeting hall at the other side of the partition.

Q. This place that was over a tavern, where was that, Fillmore and what?

A. Fillmore and Winslow.

Q. It was just an ordinary tavern downstairs?

A. I would say so, yes.

Q. What was the auditorium above it, was that owned by somebody, or—

A. By the—to my knowledge it was owned by the tavern owner.

Q. It was a sort of a semi-private club, or—

A. No, it was a hall for rent. And this—at this time I think 501 had a contract to meet steady there at a certain time in accordance with our by-laws or constitution.

Q. Was that just one big room, or was it two or three [fol. 100] rooms?

A. No, just one large hall.

Q. No bar up there?

A. No.

Q. Just platforms and chairs and tables?

A. A small stage.

Q. Do you play cards?

A. No, not too much.

Q. At all?

A. I haven't played a game of cards in several years.

Q. I am talking about that time, the 1940's.

A. No, I didn't play.

Q. You didn't play at all then?

A. No.

Q. Do you know of anybody who did play cards before these meetings, or during or after?

A. To my knowledge, I— I did see a—maybe two or three games in my time that were after the meeting, but who was in them I wouldn't know.

I never stayed, I just wait till the adjournment of the meeting and I left.

Q. You don't recall who was playing?

A. No.

Q. Did you serve in the Army?

A. Yes.

[fol. 101] Q. From January 1944 until—

A. May 1946.

Q. —where were you stationed, overseas, or within the country?

A. Well, I— I went through the regular basic training, plus technical training, because I was assigned to a bridge and water repair unit of military railway system. And most of my activity during the way took place in Belgium, near Antwerp.

Q. Did you ever have any trouble getting food or materials or anything like that to do your job over there?

A. Well, I was there when we, you might say, opened the Port of Antwerp, and once that was opened there was no shortages any more, to my knowledge.

Q. No delays?

A. Except one time on artillery shells, and that was a widely publicized fact, which was caused by strategic bombing of—of artillery shells. That was the only time I knew of any shortage, artillery shells.

Q. No delays due to slowdowns or walkouts or anything else in plants back in this country?

A. Not to my knowledge.

Commander Dunstan: I haven't anything further.

Chairman Waldman: Mr. Simms?

By Mr. Simms:

Q. Do you know Mr. Alvin Taylor, who was mentioned [fol. 102] here on Exhibit No. 3 as running for the bargaining committee on the slate headed by Ailie Brodose; do you know him?

A. Alvin Taylor, I knew only of him, I never spoke to him in my life.

Q. Would you know him to recognize him, to see him?

A. He hasn't worked in Bell since, and when I returned from the Armed Forces he wasn't there. That's a long time.

All I know about is—his appearance was that he was tall and lean, that's all.

Q. He was a tall, lean man, generally what we consider the tennis player build, or something like that?

A. Yes.

Q. Did you know him well enough to be able to—

Mr. Lipsitz: Mr. Simms must be a tennis player.

Q. I was thinking of a tall, lean man as a tennis player type.

Did you know him well enough to be able to express any opinion at all as to his political posture?

A. I did not know him at all, except from the way I testified, that he was considered a party follower, and he was a close associate of Brodose.

And as a matter of fact Brodose chose him to run in the runoff, when he was defeated and challenged the election. He was chosen by Brodose to run in the runoff as a substitute. And otherwise I knew nothing of him except [fol. 103] what I got from fellow unionists, who, the majority of whom, considered him a party—a party follower.

Q. Well, it might be difficult, and I don't mean to give you an impossible question, but could you remember at this date as to what area in Buffalo Mr. Alvin Taylor may live, or even what his address was, if it's possible?

A. No, I didn't—I—I knew him the least of the four. I knew almost nothing about him. Never spoke to him person to person

Mr. Simms: Nothing further.

By Chairman Waldman:

Q. Mr. Rosmyslowski, you mentioned the names of about three or four people who you had heard through the union in 1943 were probably either Communist Party members or Communist Party sympathizers, or in some way allied with Communism; is that right?

A. Right.

Q. And you mentioned Allie Brodose as being one of them; did you of your own knowledge know whether any of these persons which you mentioned were actually Communist Party members?

A. That's—I will say personally I would consider that impossible to state. I couldn't very well state, even if I'm almost—I'd be willing to gamble my neck on Anton Sustar—I still don't know.

[fol. 104] Q. Well, would any one of these individuals, for instance, ever say to you, "I am a member of the Communist Party"?

A. No.

Q. Or "I have a Communist Party card?"

A. No.

Q. Did any of these individuals ever display to you or anybody that you know a Communist Party card?

A. No.

Q. Do you know where these individuals may have met outside of their union activities? I am speaking of Brodose and the others whom we mentioned before, the people whom you thought were Communists?

A. I did not know, but I heard that they met on a street named Chippewa. I do not know the address.

Q. A street named what?

A. Chippewa.

Q. Chippewa?

A. Which was—they were supposed to have been—this is only what I heard—

Q. Yes?

A. —a regular office or meeting place of the people who were members of the Communist Party in Buffalo.

Q. Now, could you further try to recollect just about where in Chippewa Street this—

A. I couldn't.

[fol. 105] Q. —would have been?

A. You see, because I did not have this by myself, it's only what was told to me by others. And they sometimes—well, to give you an example, they would sometimes say, "Ah! He's one of those Chippewa guys."

Q. Did you at one time know exactly where on Chippewa Street this meeting was?

A. No, I never knew exactly where it was.

Q. What did you know about this Chippewa Street address, outside of the fact that Brodose and the others may

have met there; did you know that it was alleged to have been a Communist Party headquarters?

A. That's what I was told by my friends in the union. I was a youngster then, and some of them considered themselves protective towards me by telling me these things.

Q. Did you ever hear of Charles Taylor ever being referred to as a Chippewa Street individual?

A. No, sir, never.

Q. Mr. Rosmyslowski, were you at Bell in the years 1941-1942?

A. Yes.

Q. Do you have any recollection of any individuals in the plant circulating nominating petitions for political offices outside of union offices during those years in the plant?

[fol. 106] A. I—

Q. I mean for national elections, local elections, outside of union elections?

A. Not in those years, I don't remember.

A man would be more likely to get those on the day shift, and I was on the night shift. And we usually didn't have politics on the night shift.

Q. Do you have any recollection of petitions concerning outside politics, national politics and local politics and state politics, being circulated in the Bell plant prior to the time you went into the Army?

A. No, I can't recall any.

Q. Do you ever recall, outside of the Bell plant, either in union meetings or after working hours, being solicited during the years 1941 and 1942 and 1943 by persons who were in the Bell plant, to sign petitions for political offices outside of union activities?

A. Outside of the union political action committees taking a stand on certain candidates, such as—well, Theodore Roosevelt—

Mr. Lipsitz: Franklin.

The Witness: Yes, Franklin.

(Continuing) —I didn't hear any.

Q. That isn't the question I asked you. What I would like to know is, outside of your working hours at the Bell

plant, either on the way home, or on the way in, or at a [fol. 107] union meeting, were you ever presented with petitions?

A. No.

Q. Petitions which concerned individuals who were running for office in local or state or national government, not connected with the union?

A. No.

Q. Outside of hearing about the Chippewa group, did you ever hear of any group at the Bell plant who were referred to as Branch B Communists, or Branch C Communists, or Branch 12 Communists?

A. I don't even know what that means.

Q. This is the first time you hear that expression?

A. Well, I saw this on the charges against Taylor, when I—

Q. Was that the first time you ever—

A. It's the first time I ever saw the expression.

Q. —knew that such a thing existed?

I think you were asked by somebody whether you had ever visited at any time Mr. Charles Taylor at his home?

A. No, I didn't.

Q. Do you know where he lived?

A. Perhaps at that time I did, but I can't recall.

Q. Where are you working now, sir?

A. Bell Aircraft.

Q. Do you have any reason to have access to classified [fol. 108] information at the Bell Aircraft plant; does your job require you to have access?

A. Well, when I was committeeman, which involved the regular plant plus the experimental plant, I had to have clearance, and I got it.

Q. When was this?

A. (No response.)

Q. What year?

A. 1949-1950.

Q. What was the degree of clearance that you were required to have? I mean, was it—

A. Just a different colored badge.

Q. I mean, was it confidential, secret, top secret?

A. It wasn't top secret. It was something below top

secret, because all it took was about two weeks and I got a different color badge.

Q. And the job that you have now doesn't require you to have access to classified information; is that right?

A. I don't think so.

Q. In other words,—

A. Although I think the whole plant has some sort of—

Q. —in other words, what I am trying to bring out is—

A. Nothing special.

Q. Just so we get this down brief: was your clearance [fol. 109] for access to classified information ever taken away from you for any reason except the fact that you no longer needed it in your job?

A. No, never.

Q. It was never taken away from you?

A. It never was taken away.

By Commander Dunstan:

Q. Do you happen to know how long a period Mr. Taylor was working in Vermont?

A. As I have testified, it was either late '43 or early '44 that he went there, and then he was promoted to general supervisor in charge of the tool and die shop over there.

He was a wonderful mechanic. He is considered one of the best yet.

And he has the best tool box in the department to this day.

How long he stayed there I couldn't say, because I was in the Armed Forces, you see, and when I returned a lot of the people from the Ordnance Division were already back, and some were not. And I can't recall when he returned, but it would be in 1945, or '46.

Q. Well, he had returned to Buffalo, then, before you came back from the Armed Services; is that correct?

A. He might have returned slightly afterwards—I don't recall. Because I returned in May, 1946, and I went to work [fol. 110] very shortly after my discharge. I didn't take much of a vacation.

And at that time there were—there were cutbacks, and Charlie Taylor was temporarily in another department, to the best of my knowledge.

Q. In other words, he was working at Bell, then, in 1946 when you returned?

A. I am quite sure he returned.

Q. Returned to Buffalo?

A. Yes.

Q. But you don't know when he returned there?

A. No, I couldn't say.

Commander Dunstan: That's all.

Chairman Waldman: Do you have anything further, Mr. Lipsitz?

Mr. Lipsitz: Yes, one or two questions.

Redirect examination.

By Mr. Lipsitz:

Q. When were you born?

A. When?

Q. Yes.

A. 1921.

Q. Mr. Leone, I believe, asked you a question about can you give any explanation why Taylor, in spite of the position he took on various issues, nevertheless was part of the [fol. 111] Unite and Win caucus, the Brodose caucus; and I think you said that you just couldn't say what went on in his mind to be part of it?

So I ask you this: In 1942 was there another caucus formed?

A. Well, that would be the Maturski caucus.

Q. Was Maturski's caucus formed in 1942—and bearing in mind that he didn't win until 1943?

A. The campaigns usually start before Christmas.

Q. But in the elections during 1942 was there another caucus, if you know?

A. In the spring of 1942?

Q. Yes.

A. To the best of my knowledge, Brodose was very powerful then. There was an opposing caucus, but of no organizational value.

Q. Now I think this is somewhat repetitious, but just on

this point: Would you say there were dozens and dozens of workers at Bell who were part of the Brodose caucus?

A. Oh, yes, the slate or the candidates, as we refer to them, we call them the slate, are only the leaders of that caucus. The caucus usually has, oh, up to 200 people behind it, who get together and chip in quarters, dimes and nickels to put out leaflets, and so forth, to elect their friends to office. Usually if there are, say, 10 executive board members, [fol. 112] each one of them might have a friend or a relative, and he gets him into the caucus; so if each man gets two or three, they got 30. That's the way caucuses are organized.

But the names are only the leaders of the caucus.

Mr. Lipsitz: That's all the questions I have.

Chairman Waldman: Call your next witness.

(Witness excused.)

Chairman Waldman: Who is your next witness?

Mr. Lipsitz: Mr. Maturski. John Maturski.

Chairman Waldman: John Maturski?

Mr. Maturski: That's right.

Chairman Waldman: Can you hear me?

Mr. Maturski: (No response.)

Chairman Waldman: Can you hear me?

Mr. Maturski: Yes, all right.

Chairman Waldman: Can you hear me now?

Mr. Maturski: That's right.

Chairman Waldman: Before you testify, please be informed that Section 1001 of Title 18, United States Code, makes it a criminal offense—do you understand that?

Mr. Maturski: I understand that.

Chairman Waldman: (Continuing) —punishable by a maximum of five years' imprisonment, $10,000 fine, or both, to make a false statement or representation—

Mr. Maturski: Yes, sir.

[fol. 113] Chairman Waldman: To any department or agency of the United States—

Mr. Maturski: Got that.

Chairman Waldman: —as to any matter within the jurisdiction of any such department or agency.

Mr. Maturski: That's right.
Chairman Waldman: Do you understand that?
Mr. Maturski: I understand that.
Chairman Waldman: It's a penalty for not telling the truth—
Mr. Maturski: That's right.
Chairman Waldman: —at a hearing of this kind.
Mr. Maturski: That's right.

Whereupon, JOHN PAUL MATURSKI, called as a witness on behalf of the Respondent, was examined and testified as follows:

Chairman Waldman: Would you kindly give your full name and residence address to the reporter.
The Witness: John Paul Maturski, 111 Springer Avenue, Buffalo, New York.
Chairman Waldman: All right, now, Mr. Lipsitz is going to ask you some questions, so you look at him.
The Witness: Okay.

Direct examination.

[fol. 114] By Mr. Lipsitz:

Q. You are employed at Bell Aircraft; is that right, Mr. Maturski?
A. Yes, sir.
Q. You are a member of Local 501?
A. That's right.
Q. How long have you been employed at Bell Aircraft?
A. 18 years.
Q. At one time were you president of the local union?
A. Yes, I have been president.
Q. When were you president?
A. 1943.

Mr. Lipsitz: We have a number of exhibits here, if you will just hand me any one of the first three.

By Mr. Lipsitz:

Q. I show you Exhibit No. 1, on the back of which there appears an article, "Let's look at the record of John Maturski." Is that you they are talking about?

A. I guess that is, it must be.

Q. You are positive, aren't you?

A. Yes.

Q. You have seen these?

A. Yes, I have seen them.

Q. Do you know Charles Taylor?

A. Yes, for 15 or 16 years, I would say. Ever since he [fol. 115] started to work in Bell.

Q. What department did you work in in 1942?

A. I worked in the machine shop.

Q. Was that at the Elmwood Avenue plant?

A. Elmwood plant there. The machine shop was at that time a next-door neighbor to the department that Charlie Taylor worked in.

Q. Is that the tool room?

A. Tool work, yes, sir.

Q. Did you know Allie Brodose at that time?

A. Yes, I did. He was an oiler when I first found him out. Oiled machinery.

Q. When did you first know of him personally, if you can recall?

A. Well, I met him at some of the union meetings that we—we had.

Q. Local union meetings?

A. Local union meetings, yes.

Q. What year would you say you first met him, in that respect?

A. Well, I would say about '42.

Q. At that time was he president of the local union?

A. Yes.

Q. Did you run for office in the elections in 1942?

A. Yes.

[fol. 116] Q. On the Unite and Win slate, or against it?

A. No, there was no slate at that time.

Q. In 1942?

A. No, elections were held in the union office; there was

no politics involved at that time, when Brodose—when I ran on his—with him.

Q. Oh, you ran with Brodose?

A. Yes.

Q. In 1942?

A. In 1942. I was elected vice-president.

Q Incidentally, was that in the spring of 1942?

A. That's right.

Q. After you were elected in the spring of 1942, you say, you got to know him through attending meetings of the local union; is that correct?

A. The first few meetings. And in the plant in general, in conversations.

Q. Were you ever during 1942 or 1943 a committeeman also?

A. Before—prior to that I had been, in 1940, and in 1939 and I think in 1941 I was a committeeman—top committeeman. I mean the top bargaining committee.

Q. Those were the people who had the responsibility for administering the contract; is that correct?

A. That's right.

[fol. 117] Q. Did there come a time when you began to associate Allie Brodose with a particular point of view, politically speaking?

A. That's right.

Q. When, about when would you place that?

A. Well, the first—after—the first week I was elected. Through his conversations with him denouncing my religion, denouncing everything that I stood for, I kind of surmised that there was something wrong with the man.

He is trying to educate me his way, telling me that I need more education, that I should come to his house and he would educate me.

And I one time asked him his religion. I thought French, Italian was Roman Catholic, and I am one. I am—I consider myself a pretty good Roman Catholic, following the religion. And I'm president of a Holy Name Society in the City of Buffalo, where my church that I belong to—I carry my card here, gentleman, I'll show you.

Q. We will come to that part doing with yourself in a minute, but with respect to Brodose—

A. Yes.

Q. —continue on as you got to know him in 1942.

A. Yes, well, when we found out—when I found out what he was, I went immediately into the plant.

Q. What did you find out he was?

[fol. 118] A. I found out that he was a—a Communist, or a sympathizer. I sacrificed a Sunday morning; a Sunday morning I went down to the local union office, and the local union office was on the third floor at 75½ West Chippewa Street in Buffalo. It was right across the street on the second floor, so I could look down from the third floor down, just like looking down to here (indicating).

Q. Just a minute now; when was this in 1942; do you recall?

A. This was in '42.

Q. What month; do you recall?

A. Well, that was early—after the elections, I would say some time when we had—oh, around May.

Q. So your elections were when, in March?

A. In March or April. March nominations, and elections in April.

Q. So shortly thereafter, and you place it now probably in May, you went on a Sunday morning to the union office?

A. That's right.

Q. And was that the local union office, or the international office?

A. That's right, the local union office, 319 Root Building. That was our local union office.

Q. Did you say that was across the street from 75½ West Chippewa?

[fol. 119] A. That's right.

Q. Incidentally, this is in Buffalo; is that right?

A. That's correct.

Q. What was your purpose in going there on this morning?

A. Well, my purpose was to see for myself, not hearsay, or anybody tell me, to see what was going on. I wanted to see if the gentleman—I was speaking about Brodose—was going into the Communist headquarters that—

Q. That is the point we are getting at; did you know what 75½ West Chippewa was?

A. Yes, because it was said plainly on the window. It said, "Communist Party Headquarters."

I think that's what it said.

Q. There was no concealment, in other words?

A. No, no.

Q. What did you see that morning?

A. Well, I stayed in that building from seven o'clock in the morning until about nine, and down the street came Allie Brodose, the man I mentioned here, and a woman by the name of Freda Werb. There was another gentleman by the name of Jack Kramer, and another gentleman by the name of Don Burns, who were working at that time in Bell Aircraft.

I saw them go into the Communist Party headquarters across the street. My own eyes, I swear to God, and on the Bible that I seen them. That's when the action started. [fol. 120] The action.

Q. After that what use, if any, did you make of that information?

A. Well, I went into the plant and I said, "It's time to organize a good caucus here." Because at Bell Aircraft at that time there was at least 50 to 60 per cent Polish people working, Roman Catholics. And I did not—at that time I didn't think that a Communist should lead the Catholics, or deceive them.

I went also to some of the priests in the city, and they advised me, "Take off your coat, and you have to start fighting to oust them."

Q. Did you then start the formation of a caucus against them?

A. We formed a caucus, yes, sir.

Q. What was the name of that caucus?

A. That was the Progressive caucus.

Q. Now go ahead a little; did you in the Progressive caucus run for political office in 1943?

A. Yes.

Q. What did you run for?

A. President.

Q. And was there one or more than one elections at that time in 1943?

A. Oh, there was two elections.

[fol. 121] Q. All right, tell us what happened.

A. Mr. Brodose ran opposing me, and during the course of the—before election there was a compromise on some people running for office on my slate, we gave what we call horse-trading, one for one, who were not exactly up in perfect standing in the union. You had to be perfect standing up—a member, a member in good standing for one year, before you could run for a post like that in the local union.

So we made some horse-trading, what we called it at that time.

And the elections were held, and I beat him—I think I was about five to one.

It was a bitter election. Probably you see some of the literature there.

Q. All right, now, was that election upheld, or was it set aside?

A. No, the international—he had some contact with the international, and we held a hearing, a hearing was held. I was present at that hearing, and the international ruled that election void because of the people that were not up to par, and we—

Q. You mean who didn't have one year's membership?

A. That's right, one-year membership.

Q. So did you have another election?

A. Another election.

[fol. 122] Q. All right, who ran in that second election against you?

A. Well, he had another gentleman by the name of Alvin Taylor; he was a big strapping guy, about as big as that guy there (indicating Mr. Simms). He opposed me on this.

I didn't—I didn't change nothing, I was just plain John running for office to help clean house.

I went out and—my caucus—we ran a little party, a dance to raise money, so we could print papers against these people here. And we beat that gentleman, too.

Q. All right, then, you became—

A. President.

Q. —president of the local union?

A. That's right.

Q. And you served as one year as president?

A. For one year, yes.

Q. Did you know Charles Taylor during the time that you were vice-president from 1942 to 1943?

A. Yes.

Q. Incidentally, what was the name of Brodose's caucus; do you recall?

A. Unite and Win, I think it was—Unite and Build. There was two of them, changed the name, you see. Once he gets beat, he changed the name after this.

Q. Did you know a number of people in his caucus in [fol. 123] addition to Brodose?

A. In his caucus?

Q. Yes, did you know them?

A. Yes, at that time I did, yes.

Q. You knew a great number of them, didn't you?

A. Yes, a great number of them, sure.

Q. Were they all followers of the Communist Party line?

A. No.

Q. Could you tell us whether you made a point of identifying in your own mind at least those who were followers or members of the Communist Party?

A. That's right.

Q. You didn't?

A. That's right.

Q. You did?

A. That's right.

Q. Who then at the time did you identify, in addition to the names you told us you saw going into the headquarters, as Communists or followers of the Communist Party line, if any, in addition to these people?

A. Well, I didn't accuse anybody, only the people that I went—actually saw going into the party headquarters. I never accused anybody at no time.

Q. I didn't ask you whether you accused them or not; did you have opinions yourself?

[fol. 124] A. Opinions, no. I couldn't—I didn't have any opinions against any of the other people at all.

Q. So the only ones that you are saying you were concerned with were—

A. Just that I mentioned.

Q. —those you saw going into the Communist Party headquarters, and not the others?

A. That's right.

Q. Would you say they were in your mind at least the hard core members of the Communist Party, or followers?

A. At that time they were, at that time they were.

Q. Now, in addition to seeing them go into the 75½ Chippewa address, was there anything they said or did, any positions they took, which helped identify them for you as Communists?

A. Well, at that time at most all of our meetings, at all our conventions, all I would ever hear was the second front, the second front. That's all they were talking about, the second front, and—

Q. Who were the "they" that were talking about that?

A. Well, Brodose. And they wanted a second front, when that country was fighting over there. They wanted that we go over there and put up another front when the Russians got in this thing, see.

Q. Did you ever hear Charles Taylor talk about the [fol. 125] second front?

A. No, sir.

Q. What other issues—

A. Well, the other issues were like giving up time and a half for the sixth day. I at one time attended a—the meeting in Detroit of the international presidents—

Q. Of the presidents of locals?

A. Presidents, yes, presidents of locals.

And they had a program at that time, equality of sacrifice—and it was shortly after when I took right over. And they spoke about giving time and a half up. And of course I couldn't see me as an officer, shortly after a depression, to go down and give their time and a half away.

I opposed it, and Brodose and some of the other international people, or whoever they were, they just spit at me, that's all. Because I didn't see their line of thinking.

Q. Did Charles Taylor, if you know, take any position about giving up overtime pay?

A. Well, Charlie Taylor, he was with me on that question. He said, "We'll fight this thing here; we'll give up

our overtime when the president passes the executive order. Until then we are going to hold it."

And we did hold it, we did hold our time and a half.

Q. Did you identify the giving up of overtime pay as a part of the Communist program in the party?

[fol. 126] A. Well, that was at that time. They would do anything in order to—to make it look like they were a bunch of patriots, and at the same time the workers were losing in the plant.

And I was a president at that time, I—I too had a son in the war. And I didn't want to see my son get killed, but I didn't want to see people who were just getting up on their feet, who were unemployed for years and years, getting a few extra dimes for working Saturday for—and I couldn't see giving up time and a half.

And our local union—I'll stand on the record—we did not agree with the program, and when the president issued the order, the executive order, we abided by it.

Q. But until that time you sought the giving up of overtime pay?

A. That's right.

Q. And Charles Taylor was with you in that fight?

A. Absolutely.

Q. But Brodose opposed it? I mean, he was in favor of giving the overtime pay up; is that right?

A. Yes.

Q. How about the issue of incentive pay programs?

A. Well, the incentive program came up quite often, quite often while I was president. At one time Mr.—

Q. Excuse me one moment. Did it come up while you [fol. 127] were vice-president at all?

A. No, it didn't. It come up there while I was president.

Q. All right.

A. It came up there—once I was called at the plant, at the international once, to speak with a Mr. Bleakley, who is now dead. He was regional director.

He wanted to speak with me regarding the incentives,—piece work they called it.

Of course I had been a machinist all my life, 45 years of it I have put in at it, and I have worked a lot of piece work in my days, too. And I dialed a call to the Marine Grill in

the City of Buffalo for a meeting with Mr. Bleakley, and he had some more people with him—I don't remember if Allie Brodose—I couldn't definitely say whether he was there or not.

But anyway they wanted me to agree that if I would agree to an incentive pay plan, we would get a union shop, what that time we had no union contract—union shop; it was just a member—dues collected and paid for at the local union office, we had no check-off of dues at that time.

Q. You had no compulsory membership, in other words?

A. That is right.

Q. Go ahead, what happened, what did you—

A. Well, nevertheless, I was wined and dined, and I ate their meal and everything else. I went home, and I was a [fol. 128] stubborn old horse, I couldn't change my mind that we should have piece work, because I again figured: The Commies are always coming at these conventions and coming at meetings, always throwing these resolutions, and all that—that there—and I was on to it, and I would never go for it, not just because I didn't want to see—hurt the war effort, but I knew it was a dead scheme of the Commie Party to act.

Q. You mean the incentive system?

A. Incentive, to act patriotic at that time.

Q. Did you then identify the incentive program as a program of the Communist Party?

A. That's right, I did.

Q. I think before you started to say that when you found out that some of these people at least went to headquarters, you went to the company with information about this?

A. Yes.

Q. All right, tell us about that.

A. Well, when I saw the people going into the Com—Commie Headquarters, the CP, I called them at that time—I think they called them that; yes—that I went to the gentleman in charge of security, or FBI man. His name was Sokolowski—he was a Polish gentleman. He spoke with me. I went to his office there, and I said, "Look, these guys here are leading our people by the nose,"—I knew he was a Pole like myself—I says, "There must be something done. [fol. 129] throw them out of the plant, or something. Do something. Let's get them fired."

Q. Did you name names to him?

A. Yes; he knew who I was talking about.

And he says, "We'll take care of them in our own way." That's the way he put it to me.

Q. Did you mention Allie Brodose to him?

A. Yes.

Q. Freda Werb?

A. Yes; all of them, I mentioned all of them that I mentioned here.

Q. Were they ever fired from the plant that you know of?

A. No, I think most of them has quit. When their war—when Germany—when Germany gave up, or before, shortly, maybe a couple—a year before they quit, they all quit. Because most of them—I understood most of them came from the Maritime Union, from the lakes in there. They got jobs in there.

When they heard the fight was on, they come in to give them some help, reinforcements.

Q. At the time you are talking about now, 1941, 1942 and 1943—

A. That's right.

Q. —was there a friendliness of the part of Bell Aircraft officials towards representatives of the Russian [fol. 130] Government?

A. There was at that time, yes.

Q. How was that evidenced?

A. Well, I had quite a bit to do, because I was president; I used to go with the late Larry Bell—I used to meet directly with him on certain problems. And I have seen a lot of Russian officers around the offices, around through there, and they were all in general around the plant there, throughout the plant there.

Q. Did you ever see any pictures of Stalin?

A. Yes, I seen pictures of Joe Stalin hanging in there. He was a big hero at that time in there.

Q. When is the earliest date that you can place seeing a picture of Joseph Stalin in the Bell Aircraft premises?

A. Well, it was around 1943—'43.

Q. Was there ever any reputation that Charles Taylor had of being a Communist, that you know of?

A. No, sir, I never accused the gentleman, outside of having good unionism. When I was president of the local union, I wanted good, aggressive committeemen, and Charlie Taylor was one. If—that's—that's all that ever bothered me. I never seen that man.

I followed—tried to get information on whom I was talking with most of the time. Now, probably Charlie—Charlie would be a little surprised if I tell him that I know at that [fol. 131] time that he came in and he worked for a street car company in Buffalo; am I right (to the respondent)?

Mr. Lipsitz: You can't answer him.
The Witness: I know.

By Mr. Lipsitz:

Q. You went to the trouble of finding out something about Charles Taylor?

A. That's right, find out who I was talking with and dealing with.

Q. So it was your opinion that he was not a Communist or a follower?

A. That's right, that's right.

Q. Generally amongst the people in the union who were not active, or gave no thought to these things, was there any opinion amongst them that Charlie Taylor was a Communist?

A. No, I never heard anything. Nobody ever accused him. He was always with us—I think he would set on committees with me, I always understood him to be a good trade union man.

Q. Did you ever conclude or think that because he was in the Brodose caucus for some time that that made him a Communist follower?

A. No.

Q. Were there many in that caucus who were not?

A. Yes, there were. There were a bunch of poor, innocent [fol. 132] victims, what I called them. They were dragged in there under the guise that I was a company stooge, that I was going to wreck the union. And they wanted to build it up after I got mine built up, they want to drag in especially people who worked around my vicinity in the machine shop there.

Q. To fight you?

A. Yes, so they could go after me a little bit over there.

Q. Well, the exhibits are eloquent expression of how they went after you.

Now, you started to tell us before, as far as yourself was concerned, that you are a very devout and active Roman Catholic; is that correct?

A. That's right, I belong to the Council of National Catholic Men in the City of Buffalo. I'm also a president of my church Holy Name Society. And an active president, too—I mean, not just—

Q. Are these activities of recent date, or have you always been—

A. No, I've always been active.

I would like to explain to you—here's my -if you gentlemen care to see my card. You see, I—I have been brought up a Catholic, and I have always lived up to it—to my religion.

Q. I suppose it is rather commonplace that one of the [fol. 133] things that Roman Catholicism is very progressively against is Communism; isn't that right?

A. Absolutely, always were and we always will be.

Q. Have you ever knowingly supported or associated yourself with anybody, or have you ever continued to associate yourself with anybody who you found out was a Communist?

A. No, no, sir.

Q. There is your card back, Mr. Maturski.

A. Yes, sir, thank you.

Q. I take it, then, that what you have said about Mr. Taylor, and your opinions about him, are based also in part upon your staunch Roman Catholicism?

A. Absolutely.

Mr. Lipsitz: I have no further questions of the witness.

Chairman Waldman: Mr. Leone.

Mr. Lipsitz: Just one more question.

By Mr. Lipsitz:

Q. How old are you, Mr. Maturski?

A. I am 59. I'll be 60 in June. Just a young fellow yet.

Chairman Waldman: Mr. Lipsitz, the hour does not permit us to examine Mr. Maturski, because we feel that it is certainly going to be a half-hour examination, or more.

Mr. Lipsitz: I would assume as much.

[fol. 134] Chairman Waldman: So if he can come back tomorrow morning—

Mr. Lipsitz: He is available tomorrow morning.

Chairman Waldman: Fine, we will continue tomorrow morning.

Mr. Lipsitz, is there any reason that you have that you can think of at the moment why you must conclude with certain people by tomorrow?

Mr. Lipsitz: Why I must conclude by tomorrow?

Chairman Waldman: That's right, with certain of your witnesses?

Mr. Lipsitz: No, I'll take—

Chairman Waldman: You have no reason why you must conclude with certain witnesses by tomorrow?

Mr. Lipsitz: No, every witness I have got with me is available tomorrow, and again at any other time you may fix—unless they pass away.

Chairman Waldman: All right, we will continue at 9:30 tomorrow morning, and we will examine you, Mr. Maturski.

The Witness: Good.

(Whereupon, the hearing was adjourned to Friday, November 2, 1956.)

[fol. 135]

PLAINTIFF'S EXHIBIT 2

BEFORE NEW YORK INDUSTRIAL PERSONNEL SECURITY HEARING BOARD

CASE No. OSD 56-198

HEARING

Friday, November 2, 1956

[fol. 137]

Transcript of Proceedings

Chairman Waldman: On the 2nd day of November, 1956, the New York Industrial Personnel Security Hearing Board

is convened to continue in the hearing of Charles Allen Taylor, which was adjourned at the conclusion of the hearing day, November 1, 1956, until this morning.

All members of the Board who were present yesterday are again present, and Mr. Taylor is present with his attorney, Mr. Lipsitz.

At the conclusion of the hearing yesterday we had apparently completed the direct examination by Mr. Lipsitz of Mr. John Maturski.

Mr. Lipsitz, do you have anything further of Mr. Maturski?

The Witness: Yes, I missed up—

Mr. Lipsitz: Yes, there were a couple of points.

The Witness: I wanted to bring up one more—two more points. That I had mentioned there was—I mentioned—you asked me a question if I know any more Communists. Yes, there was—I slipped on one, because he went out after—Tony Sustar, they used to call him, that was his name, Tony.

He was a gentleman who used to bring in Communist literature into the plant, the Daily Worker—that's what he used to bring in. He was on the night shift; of course, I worked the day shift. I never got it, but the people that [fol. 138] worked in that department, they resent it, they used to tell me about it. Of course, there was always a fight between me and him, and we never got along together.

Another point I want to bring up, too, that in 1942 when I defeated—I mean, ran with Mr. Brodose, and was elected vice-president, and he was elected president, that at the first executive board meeting—we held board meetings once a month: that was the president, vice-president, financial secretary, treasurer, and the three sergeants—there was a sergeant-at-arms, and a guide and three trustees. I brought—he came to the executive board meeting, and because of his activities what I have saw, I said, "We shall elect a chairman of this executive board."

And naturally I had the people that were on the executive board at that time with me, and I was elected chairman. The customary—the president acts as chairman of the executive board, but I was elected chairman of the executive

board, and Mr. Brodose never came near the executive board after that.

But he barred me from company grievance meetings for a long time, until the membership really buckled down and —well, about four or five months.

And then I was sent back in the—to the company negotiation meetings.

That's about all I have to say on that, with the exception [fol. 139] of my personal life—I don't think you people are interested. I'm just an average man who a young kid was in an orphanage asylum.

Mr. Lipsitz: John, they will ask you anything about yourself they want to know.

The Witness: All right.

Chairman Waldman: Is that all?

Mr. Lipsitz: That's all at this time.

Chairman Waldman: Mr. Leone, do you wish to inquire?

JOHN PAUL MATURSKI, resumed the stand, and testified further as follows:

Cross examination.

By Mr. Leone:

Q. How well, Mr. Maturski, do you know Mr. Taylor?

A. Charlie Taylor?

Q. Yes.

A. Well, I've known him in the plant only. In the plant. I never associated with people outside—I mean, on union business, outside the plant.

I knew Charlie Taylor—well, I would say for 15 or 16 years. I had disputes with him regarding some grievances, you know, in the plant, but never any real hard disputes. Charlie—we would have some grievance or something, and we had—at some meeting or something like that, and he would bring it up to me, but—sometimes we didn't always [fol. 140] agree, but I was at that time president of the union, I thought I was running the union at that time, and I thought the grievance should be settled for the satisfaction of the union.

As far as Charles Taylor is concerned, I never had any harsh words, I can't say any harsh words against the gentleman at all, and I thought he was always a pretty nice fellow.

Q. Just for the record, have you ever visited in his home?

A. No, not his home, never.

Q. Has he ever visited your home?

A. No, sir.

You have to talk up a little louder, you know what I mean—

Q. Did you ever go out together socially?

A. No, sir. Maybe after a meeting, or something like that, for a beer, or something like that—that's about all.

Q. Always in connection with union business?

A. That's right.

Q. Now as I understand, you testified that you ran on a progressive platform against Allie Brodose?

A. That's correct.

Q. Was the main issue in that particular contest the issue of Communism?

A. Yes, sir, definitely.

[fol. 141] Q. And you felt that that was the main issue?

A. That's right.

Q. Was that generally accepted to be the main issue in the plant?

A. Yes, sir.

Q. It is fair then to assume that since you were elected—

A. Yes.

Q. —you were elected because you received the support of the anti-Communists?

A. That's right.

Q. The anti-Communists in the plant?

A. That's right.

Q. Did you feel that the votes at that election were divided on that specific issue?

A. Yes, sir.

Q. You do?

A. Yes.

Q. Did the people who ran on the Brodose slate run as a unit, or did they run separately?

A. Well, they ran—well, I would say, put it this way: they ran as a unit on the slate, but that there were a lot of people on that slate who at that time didn't know exactly what they were running on. I'll put it that way, they didn't—I mean, for what they were running for.

[fol. 142] Q. Well, let me clarify for my own mind: when they voted did they vote for Brodose and Taylor and everybody else in one vote, or was there a separate vote for Brodose and a separate vote for Taylor and a separate vote for the others?

A. They were all separate votes, yes, sir. I mean, the slate was made up that way, that they all voted for all separate candidates. It was not just one X there—is that what you mean—one X there for the whole slate?

Q. That's right.

A. No, they—

Q. So it was possible to have a president from one slate and a vice-president from another slate, and a treasurer who was an independent?

A. That's right, that was it. That was the way it went.

Q. Do you happen to recall how the vote went during your election as regards, for example, the total vote for Brodose and the total vote for Charlie Taylor?

A. No, I—I can't recall that, sir. It's some years; but I can say this: that my slate won overwhelmingly, by a big majority. I can't recall just how the vote went. It wasn't close, anyhow.

Q. During your campaign did you make any speeches?

A. At one time—one speech at the veterans hall. We had a—a dance floor—to raise funds. And I made a speech [fol. 143] at that time, that we were going to be successful in our endeavor to clean out the clique, what we call them, the Commies, CP's we called them at that time.

Q. Yes; and did you make any distinction in that speech—

A. You mean as individuals?

Q. —amongst any of the individuals?

A. No, I—just as a slate.

Q. You grouped them all together?

A. That's right.

Q. And you said, "These are Commies, throw them out," is that what—

A. That's what I said,

Q. —the intent was?

And did you believe that?

A. Yes, I believe—I believe that there were people in there at that time, in that caucus in there, like Brodose—he was the leader of them—that were actually trying to get a hold of onnocent—innocent people. And he did have—I think I can swear to my good Lord, that he did have a lot of innocent people that didn't know. They were the first time—they were the first time that they were ever in the labor movement, that they were sucked into that little caucus that he had, see.

Q. Was Charlie Taylor one of those innocent people? [fol. 144] A. Oh, I couldn't—well, I imagine he was. He was—they were new over there at the game. There was quite a few people at that time that I used to try to get to talk to them in the plant, and at the meetings, at the union meetings. Who these people were—I don't know if I ever spoke with Charlie Taylor about Allie Brodose or not.

But I did speak to a lot of people.

Q. Did you before you drew up your slate—

A. Yes.

Q. —and I assume you had a great deal to say—

A. That's right.

Q. —about whom would be on your slate?

A. Yes.

Q. Did you request that Charlie Taylor join your group?

A. I can't recall whether I did or whether I didn't. I requested a lot of people to come to our caucus. I don't recall—I can't truthfully say if I did or not. I didn't—I can't say.

Q. Did you ask a lot of people to join?

A. I asked an awful lot.

Q. A lot of people to join who didn't join?

A. Yes, a lot of them that didn't join, because of course they were—the reason for that was because I was painted

as a company stooge, or whatever they wanted to call me, and they wouldn't join. That was one of the reasons that—
[fol. 145] the propaganda that was passed on by the opposition, that I was a company stooge and a sellout man.

Q. You mentioned yesterday about this incident—

A. What?

Q. You mentioned yesterday about this incident of seeing Brodose and others going into the—

A. That's true.

Q. —Communist Party Headquarters?

A. Yes.

Q. May I ask whether you did that on any other occasion?

A. No, sir, just once. It was on a Sunday morning that I—

Q. Did you feel that as a result of that you had seen all the Communists that were in the plant?

A. Well, I figured at that time I seen the leaders of the —the movement behind it.

I didn't dare to go any more down there into the Root Building, I had to be a little careful, because I received a lot of threats after I spoke about that, from—over the telephone, you know—I'm going to get my head knocked off, and stuff like that, you know; so I just couldn't take on the whole gang, whoever they were. Didn't want to—didn't want to get hurt too much.

Q. Do you happen to recall, after you made this infor-
[fol. 146] mation public about the fact that you saw Allie Brodose and others go into the Communist Headquarters, whether or not Charlie Taylor expressed any sentiment one way or other about that?

A. No, he didn't.

Q. He didn't?

A. No, I never spoke to—I don't think I spoke too much.

Q. I don't mean whether you spoke to him.

A. No, no.

Q. But whether you know whether he made any reference to it?

A. No, he didn't.

Q. At the time of the election of the delegates to the convention—

A. Yes.

Q. —we have an exhibit here, which is Exhibit 4, which is headed, "For a Progressive union, vote for all seven," and Charles Taylor's name appears on this exhibit, together with your name.

A. That's right.

Q. As I understand it, this took place shortly before the fall of 1943, which would be some five or six months after the spring election; could you tell the Board how Charlie's name came to appear on this ticket?

[fol. 147] A. Well, as the group, the Commie group and the Progressive group, we kind of—the Progressive group kind of stood up, and we—the Brodose group kind of weakened after that.

We selected the best people for a slate, to run on that. We were still the progressives, and there still was another group—I don't know whether that was the independent progressives, or the progressives, that you probably have there, but there was another group in there. They called themselves the independent progressives. They didn't like the way—some of the stuff I ran in the union.

I was wholeheartedly for the union, nothing else, and probably they didn't like some of the stuff that I had done in there, the—me, I didn't take too many orders from anybody, to be frank about it. I mean, when I was president.

I mean, from the people. I thought I ran the union for the benefit of everybody, not for just a few, or a little caucus. And that's why it kind of stood up.

Q. I don't think you answered my question.

A. Well, you asked me how that appeared. Well, I—

Q. How Charlie Taylor's name got on your ticket?

A. Well, we—except that Taylor was one of the people that was considered a good guy, who always was against piece work, who was always against incentives, to be on our ticket.

Q. In other words, you encouraged him to leave the [fol. 148] Brodose ticket; or did he come up to your group and ask that he be associated with it—that's what I am trying to get at?

A. That's right.

Q. How did it happen?

A. Well, to recall so many—back so many years it's kind of hard for me. But I'm sure we invited the good people to a caucus. We held caucuses in Hotel Lafayette in Buffalo, and Charles Taylor appeared at our caucus. And before—before we accepted him, we voted on him, on the good people. And Charles Taylor was accepted as one of the good people.

Q. You have testified that in your opinion Allie Brodose was a Communist or a Communist sympathizer?

A. That's right. He didn't go into the Communist Party for nothing, to smoke cigarettes. He just went in for something. I—

Q. Now, was Allie Brodose the type of person who in your opinion put the interests of the Communist Party above any others?

A. That is correct. That is true, true.

Q. Do you feel that he would have selected individuals for his slate who shared his sentiments?

A. Well, he selected—or he—there was no such—I mean there was no such thing as selection. He went around and got individuals to go along with him, that's the way it was, [fol. 149] to fill up the slate.

Then—because there was—he just didn't have too many people in the plant after I was—

Q. You indicated yesterday—

A. That's right.

Q. —that Allie Brodose said to you that you needed education?

A. Education, that's correct.

Q. And you also indicated that what he meant was that you needed education along Communist lines?

A. That's right.

Q. I gather from that that Allie Brodose was an educator?

A. Oh, yes, he was that. He was up—

Q. Would it be fair to assume that he educated or attempted to educate the others who were on his slate?

A. That's right, I agree to him.

Q. You agree?

A. He would.

Q. You agree that he would have at least attempted to do so?

A. He would have attempted, but I don't know whether he would have succeeded or not. That I can't say.

Q. Have you seen the information which is contained in the statement of reasons in this case?

[fol. 150] A. No, no, sir.

Q. You have not?

A. No, sir.

Q. Do you know whether or not Charlie Taylor was ever a member of the Communist Party?

A. No, sir. I cannot truthfully—

Q. Have you ever heard any—

Mr. Lipsitz: Wait a minute, I don't think he finished his answer.

Chairman Waldman: He said, "I cannot truthfully—"

The Witness: I cannot truthfully swear under oath that I ever thought Charlie Taylor being a Communist Party member or card-carrier. I never accused Charlie Taylor of that. Never.

By Mr. Leone:

Q. This might be a little unfair, but I am going to ask it anyway.

A. That's right.

Q. Have you ever heard him designated as a Communist?

A. No, sir.

Q. Never?

A. No, sir.

Q. Can you explain to the Board why that would be, that Taylor would never be designated as a Communist, even though he ran on a slate with a person who was [fol. 151] considered to be a Communist?

A. Well, I would explain in this way: I always took it this way, that the people that Allie Brodose had on his slate—I often said that then, and I'll say it now—had rings under their noses—they were misled. They were misled to come into his caucus.

Q. I almost got the impression from what you said before that you may have referred to Charlie Taylor as a Communist during your campaign, at—

A. No.

Q. (Continuing) —at least by inference?

A. I never—never referred to Charlie Taylor as a Communist.

The only people I ever referred to as Communists, was when I actually catch them. I don't accuse, slander people at no time. I don't do that.

Q. I'd like to read some names to you.

A. Yes.

Q. And I'd like you you to tell me whether the names mean anything to you, and if so, what they mean to you. Peter Grant?

A. I don't know him, never heard of him.

Q. Frank Herron?

A. No, sir.

Q. Charles Doyle?

[fol. 152] A. I read about him. He was a Communist Party organizer, or an international representative in the City of Niagara Falls. He has since been deported.

Is that—I mean, that's the gentleman you are talking about?

Q. Have you ever met him?

A. No, sir.

Q. All you know about him—

A. What I have read in the papers, that's right.

Q. Is what you have read?

Do you know anyone who knows him?

A. No, sir.

Q. Vincent Fantauzzo?

A. No, I never heard of him.

Q. You mentioned that you knew Anton Sustar?

A. That's right.

Q. Did you ever see Anton Sustar in Charlie Taylor's company?

A. No, sir.

Q. Did you ever see them go out together?

A. No.

Q. Or otherwise associate—

A. No, sir.

Q. Let me complete.

(Continuing) —or otherwise associate Taylor with Sustar?

[fol. 153] A. No, sir.

The only thing I knew about Sustar, he was a Commie, and he was working the second shift. He was a friend of Brodose, and that's all I ever know about him. I never—

Q. Before I go on with the names, something occurred to me that I would like to ask you about: Did you conduct any investigation, other than your own observation of the individuals walking into the Communist Party Headquarters?

A. No, no; I only went—went down there to observe and see for myself. Otherwise I didn't, as—

Q. Did you—

A. I didn't ask anybody, or I didn't ask any questions.

Q. You reported it to the FBI?

A. Yes, to the man in charge of security, or FBI. It was a Polish fellow in there. I don't—

Q. At any time during that conversation did the name of Charlie Taylor—or rather was the name of Charlie Taylor mentioned?

A. No, sir.

Q. You mentioned that Anton Sustar brought the Daily Worker into the plant?

A. That's right.

Mr. Lipsitz: He didn't say—

The Witness: Yes, I didn't see it.

Mr. Lipsitz: Just a moment. Did he say the Daily [fol. 154] Worker? My recollection is he said, "Communist newspaper."

Chairman Waldman: I think he said Daily Worker, but—

Mr. Lipsitz: Did he say it? Okay.

Chairman Waldman: Let him answer it. He is an intelligent witness, and maybe he can answer his own questions.

The Witness: Yes, the Daily Worker. That's the Communist newspaper, that's their press.

By Mr. Leone:

Q. Did you ever hear of anyone else bringing the Daily Worker into the plant besides Anton Sustar?

A. No, sir.

Q. Clara Lester?

Mr. Lipsitz: You are now resuming the names, and you are asking if he has heard about them?

Q. Yes, the name Clara Lester.

A. No, sir.

Q. You never heard of her?

A. Never heard of her.

Q. Sam Weisman?

A. Yes, he was the gentleman who was writing the propaganda sheet, or helped to write the propaganda sheet against me. I mean, at that time.

He was a Commie at that—in the City of Buffalo—at that time, around there.

[fol. 155] I was—I was told by people who were in my caucus that they would have suspected that—I think it was in the Hotel Statler, and he was one of the people who came when Brodose protested the election. You probably—I spoke about yesterday.

And he was one of the guys that they said was helping to write the propaganda sheet against me.

In fact, I—I pretty near got into a fist fight with the gentleman. He was a little short fellow.

Q. Was Sam Weisman an employee at Bell?

A. No.

Q. Do you know what position he held?

A. No; I know—I know I heard in the City of Buffalo, around the labor movement, that he was a CP, Commie.

Q. What did he do for a living?

A. I don't know, I don't know the gentleman. I only seen him once in the hearing at the Hotel Statler, when we protested—they protested the election on us.

Q. He was a friend, or do you know, of Allie Brodose?

A. Well, he must have been a friend of Allie Brodose, because he was up there—brought in by them over there, by—at that hearing in there, to listen to what went on at that protest election.

Q. Do you know whether or not—

A. No, I don't.

[fol. 156] Chairman Waldman: He hasn't finished his question, Mr. Maturski.

The Witness: Yes.

By Mr. Leone:

Q. Do you know whether or not Sam Weisman ever knew Charles Taylor?

A. No, sir. I'll—just—excuse me. I thought you asked me whether I ever knew him.

Chairman Waldman: That's all right.

Q. George Lohr?

A. No, sir.

Q. Jim O'Connor?

A. There was a Jim O'Connor hanging around with Allie Brodose who worked—at one time worked in Bell Aircraft.

Q. Do you know anything else about him?

A. No, outside of being a friend of Brodose. He's over there—I never had too much faith in the gentleman, I'll tell you that, because anyone hangs around with Allie Brodose, I kind of steered away from him.

Q. Do you know whether or not Jim O'Connor knew—

Mr. Lipsitz: Are you talking about Jim O'Connor, or James Connors?

Q. I'm sorry, Jim O'Connor.

A. Oh, no, no. Jim Connors is the one that I knew. Jim Connors. That was the gentleman I knew in Bell, not O'Connell.

[fol. 157] Q. Let's get it straight: it's O'—

A. No.

Q. (Continuing) —C—

A. That is not the gentleman. That—I got him wrong. There was a Jim Connors in Bell Aircraft, too.

Q. Well, this Jim Connors was a friend of—

A. Brodose.

Q. —Allie Brodose?

A. Yes.

Q. And you would therefore assume, one of the Communists or Communist sympathizers?

A. Sympathizers or friends, or whatever it is you want to call him.

Q. But you don't associate that name with Charles Taylor?

A. No, sir.

Q. In any way?

A. No.

Q. Freda Werb?

A. Oh, she was mother Communist.

Chairman Waldman: A what?

The Witness: Yes, she was a—she was a—well, I mean, we—we—she was always in the front seat at the membership meetings, whenever we had membership meetings, with the resolutions. And I used to just—I want to be frank, [fol. 158] just a plain, ordinary guy: "Look, save your resolutions for the other gang of Commies over here, this is no place for resolutions."

So I knew her. She was a dead Commie, that I knew. Well, not that I mean—a true Commie.

By Mr. Leone:

Q. Do you associate the name Freda Werb with Charles Taylor?

A. No, sir.

Q. You don't?

A. No, I never seen him with her, or after—I never seen Charlie Taylor with Freda Werb, or—that I can ever recall or just truthfully say.

Q. There was some mention made here about the difficulty that a witness yesterday by the name of Rosmyslowski had during the summer of 1943, involving a walkout and his discharge and his reinstatement; we have testimony to that effect.

A. That's right.

Q. There is also testimony to the effect that Charles Taylor supported Joseph Rosmyslowski; did you play any part—

A. In it?

Q. —in that particular—

A. Well,—

[fol. 159] Q. —event?

A. At that time I was president of the local union, and the president must at all times, the way I understood it, try and hold peace in the plant, especially in time of war. When that occurred, the walkout occurred there, it was through some misunderstanding, I think through some foreman and some misunderstanding in—through the heat treating department, that the smoke was coming in through there. Well, the people in that department on the second shift walked out. I worked the day shift. They walked out into the parking lot. They were—

Q. No, that information we have, Mr. Maturski.

A. You have?

Q. I just want to know what part you played in it.

A. Well, I had the part of calling the United States Conciliation, my international union, to resolve and settle that grievance.

As a result Mr. Rosmyslowski was exonerated from any charges.

Q. Am I right in assuming that you supported Mr. Rosmyslowski?

A. Oh, yes.

Q. Was it your recollection that Charlie Taylor supported Rosmyslowski?

A. Yes, because the day shift wanted to walk out, too, on [fol. 160] account of that.

The heat treat was right next to the tool room, where they were working, and stuff like that; and the smoke that was being caused from the heat treat at that time was causing trouble not only on one shift, but on both shifts. But more on the second shift, because they used to open up the furnaces, and they got more smoke on the second shift than they did on the day shift, see.

Q. Do you recall the position that Allie Brodose took on that particular issue?

A. Oh, yes. Oh, sure. Yes, he was after it; he says, "Look, don't hinder the war effort," he says, "it's a—make these guys stay out of here."

He says, "It's better to lose two guys than having these walkouts."

I says, "I happen to be president of the union"—I said, "there will be no more walkouts as far as I am concerned

if I stay in the shop here day and night, watch this thing here." We settled our grievances that way.

But as far as Brodose he—he was for no walkouts. He wanted to move people out of the shop just because—well, his political beliefs and such like that.

Q. At one time was there an occasion where Charlie Taylor and Allie Brodose got into a discussion on this issue?

A. Well—

[fol. 161] Q. Do you recall that occasion?

A. I don't recall that, no, sir.

Q. You don't?

A. No, sir.

Q. Did you ever hear the name Svea Kate?

A. No, sir.

Q. Did you ever hear of an organization known as the Niagara Frontier Committee—Niagara Frontier Committee?

A. No, sir.

Q. Did you ever hear Charlie Taylor openly denounce Allie Brodose?

A. Openly denounce?

Q. Yes.

A. Well, I've seen disputes at membership meetings, that I have seen with Charlie Taylor, as a certain item would come on the floor. I see a lot of disputes between Charlie Taylor and Allie Brodose at membership meetings.

Q. I was thinking more of whether or not you have ever heard Charlie Taylor denounce Allie Brodose as a Communist?

A. Not to my recollection, sir.

Q. Have you ever had any discussion with Mr. Taylor regarding Communism?

A. Yes, yes. I told Charlie Taylor not too much of a discussion—"actually, Taylor," I says, "this Allie Brodose is playing you people—whoever he's got on his slate—he's playing you. You people here has got rings around noses, [fol. 162] and he's trying to bring people in."

Q. Can you fix this particular conversation, the time and the place?

A. Oh, I couldn't. It happened—

Q. About when?

A. Oh, it was between—about 1943, I would say.

Q. During your campaign?

A. That's right.

Q. And you had a discussion with him?

A. Yes.

Q. And do you know how you came to have this discussion with him?

A. Well, it was for me to persuade people, innocent people who were taken in by Brodose, to give me the support. That's—

Q. Was this a private conversation you had?

A. Yes, in the shop, like. We used to stand in an aisle at lunch time, and always chasing around trying to get people to support.

Q. What did Charlie Taylor say in response to your statement?

A. Well, Charlie Taylor, he understood that Allie Brodose wasn't just true blue. I mean, after I told people that —I told Charlie Taylor and I told a lot of people about. I came out openly, what I saw.

[fol. 163] And Charlie Taylor told—said to me that—I'm trying to recall for the best now, for my recollection—Charlie Taylor says that—well, that he was not going along with Brodose's outside policies, out—only as a good union man he had the right, I think, at that time to run as a committeeman, or whatever he was running for. That's —his outside policies, or whatever he was doing on the outside, he didn't take that into consideration.

Q. No?

A. No, and not only Charles Taylor, but most of the other people who ran on his slate, they thought that what I was talking at that time was a lot of poppycock.

Q. Did Charlie Taylor support you in this particular campaign?

A. Yes, he supported me, absolutely. Charlie Taylor was with me all the time.

Q. Even though he was running on the—

A. Yes, he—because we worked in one department, and he worked in the other. It was just close by.

Q. No, I—

A. You mean—

Q. Yes, I am a little confused, I don't understand how he could be on the Brodose ticket and support you.

A. Look, as an individual, he knew that I was working for the members in the local plant. I stated my position that [fol. 164] I am interested only in good unionism.

And Charlie Taylor told me, "As far as the union is concerned, John," he says, "I don't think they can get a better man here to run this union."

That's about he—the way he put it, see.

Q. A better man than whom?

A. Than me to run this union.

Now, he never, as far as I know—he never campaigned in his department against me, and I would say that is good support.

Q. But he remained on the Brodose ticket?

A. Oh, yes.

Q. Do you think he was doublecrossing Brodose?

A. Well, I couldn't say, that, whether he was doublecrossing or not. But—

Q. Well, but if you had a man on your slate that was supporting Brodose?

A. Well, we did have, we did have.

Q. You did?

A. Yes.

Q. Did you remove him from the slate?

A. Well, after the slate was on there, there is nothing that you can do; after the election slate was on there, well, you just have to go through with the election.

But Brodose was a very, very sharp talker, he could [fol. 165] convince people that I was a company-paid agent, and stuff like that—you know. And naturally he would get some poor guy in there who would support him.

Q. Did an individual who was on the slate have to get his permission to be on that slate?

A. Did he have to have his permission?

Q. Yes.

A. Well, he actually would. Yes, I would say yes.

Mr. Leone: I have no further questions.

Chairman Waldman: Commander Dunstan?

By Commander Dunstan:

Q. Mr. Maturski, I presume that you have clearance?

A. What?

Q. You have a clearance?

A. What do you mean "clearance"?

Q. Access to classified material.

A. Oh, yes.

Q. And you have filled out Personnel Security Questionnaire forms?

A. Yes.

Q. How many times have you filled them out?

A. Well, I think I filled out—filled them out about three or four times. Recently I would say between a year—a year or two ago.

Q. Now, in each case did you yourself fill out the whole [fol. 166] form, or was some of it typed, and you just filled in—

A. No, no, I filled it out, and then they typed it in. I mean, they typed—they—I filled it out in pen, and then they type it, you know, and I'd sign it.

Q. Each time you filled out—

A. Each time, that's right.

Q. —a completely new sheet?

A. That's right.

Q. Then after it was typed, before you signed it you looked at it to make sure that everything was correct?

A. That's right, that's right.

Q. Were there any mistakes in your form after it was typed?

A. Not to my knowledge, sir.

Commander Dunstan: That's all I have.

Chairman Waldman: Mr. Simms?

Mr. Simms: No questions, Mr. Chairman.

Chairman Waldman: I have no questions.

Mr. Lipsitz?

Mr. Lipsitz: Just one or two.

Chairman Waldman: Would you face Mr. Lipsitz again. He wants to ask you more questions.

The Witness: Okay.

Redirect examination.

By Mr. Lipsitz:

[fol. 167] Q. Mr. Leone, the gentleman on the left just asked you if an individual's permission would have to be given before his name were put on a slate in the local union elections in a particular caucus, and you said, "I would say that an individual would have to give permission." Has there ever been any instance that you know of where an individual was put on a slate without his permission?

A. Yes, sir.

Q. There is no law or statute which requires it?

A. There is no fast rule. No fast rule.

Q. Now, Mr. Leone also mentioned that he was a little bit puzzled because at one time you said when you made a speech, a campaign speech, you attacked the Brodose slate as being a Commie slate, and then later on in answer to a question from Mr. Leone you said that however, you never attacked Charles Taylor as being a Commie?

A. That's right.

Q. When you say you attacked the Brodose slate, you mean that you attacked the individuals, or you were attacking whom?

A. I attacked Brodose. The only individual I point fingers at are people who I actually see go into places, or stealing, or anything like that. That's who I—I blame. Because I can't—

Q. Do you know Robert Siegler?

[fol. 168] A. Yes.

Q. Did you ever attack him as being a Communist?

A. No, sir.

Q. He is not one, is he?

A. No, sir.

Q. So far as you know?

A. No.

Q. How about Leon Sam Marzinsky; did you ever attack him as being a Communist?

A. No, sir.

Q. How about Samuel Lesh; did you ever take him as being a Communist?

A. No, sir.

Q. Why don't you look over this slate. I show you Exhibit 3, and I ask you to look at the names on that slate?

A. Well, as far as—

Q. Would you say—

Just a minute, let me ask you a question.

Would you say that the overwhelming majority on there, as far as you know, never were Communists?

A. That's right. Here is one gentleman right in here, you have Joseph Maitre in here, who is now general foreman of the electrical division in Bell Aircraft.

Q. You don't think he was ever a Communist?

A. Oh, I don't think so. I know he wasn't, but they [fol. 169] were just innocent victims. That's what I said.

Mr. Lipsitz: That's all.

Chairman Waldman: You are excused, Mr. Maturski.

The Witness: Okay, I—

Mr. Lipsitz: Thanks.

The Witness: Thank you, gentlemen.

(Witness excused.)

Chairman Waldman: Let's have a five-minute recess before you get your next witness.

(Recess had.)

Chairman Waldman: Who is your next witness?

Mr. Lipsitz: McGovern, Gilbert.

Chairman Waldman: Mr. McGovern, before you testify, it is my duty to inform you that Section 1001 of Title 18 of the United States Code, makes it a criminal offense, punishable by a maximum of five years' imprisonment, $10,000 fine, or both, to make a false statement or representation to any department or agency of the United States as to any matter within the jurisdiction of such department or agency. Do you understand that?

Mr. McGovern: Yes, sir.

Whereupon, GILBERT McGOVERN, was called as witness on behalf of the Respondent, was examined and testified as follows:

[fol. 170] Chairman Waldman: Mr. McGovern, would you kindly give your full name and residence address to the reporter.

The Witness: Gilbert McGovern, 4 Riverview West, Tonawanda, New York.

Chairman Waldman: Will you proceed, Mr. Lipsitz, please.

Direct examination.

By Mr. Lipsitz:

Q. When you talk, address yourself to them, because they are the ones that want to hear what you say?

A. Yes.

Q. You are an employee of Bell Aircraft?

A. Yes.

Q. How long have you been employed there?

A. 15 years.

Q. You are a member of Local 501?

A. Yes, sir.

Q. Do you know Charles Taylor?

A. Yes, sir.

Q. How long have you known him, at least known who he was, how long?

A. Oh, I'd say about 14 years—14½.

Q. Were you working in the plant in 1941, 1942 and 1943?

A. Yes, sir, I was.

Q. What department did you work in?

[fol. 171] A. 43.

Q. What is that?

A. That's the machine shop department.

Q. Which facility were you working at?

A. Elmwood.

Q. Elmwood Avenue plant?

A. Yes, sir.

Q. Was the machine shop close to or adjacent to the tool room?

A. Practically in the same department.

Q. What shift were you working during those times?

A. Third shift.

Q. Charles Taylor worked on a different shift?

A. Yes, sir.

Q. How did you get to know him when you first got to know him?

A. Union activity.

Q. Through the union. Were you ever an officer of the union?

A. Well, just what do you mean by an officer?

Q. All right, did you ever hold any position of any kind in the union?

A. I was steward and committeeman.

Q. Steward and committeeman?

A. Yes, sir.

[fol. 172] Q. You are talking about a zone committeeman, or a top committeeman?

A. Well, both.

Q. You have been a top committeeman?

A. Yes, sir.

Q. Do you recall when you were a top committeeman?

A. Yes, 1945 to 1946.

Q. Before that, in 1941, 1942 and 1943, did you hold any position?

A. I was steward.

Q. Steward in your department?

A. Yes, sir.

Q. There has been some limited reference made so far in this hearing as to what was referred to by one witness at least as Red-baiting; are you familiar with what Red-baiting is?

A. Yes, sir.

Q. Do you have a particular reputation in the plant with respect to this?

A. Well, they claim that I am the king of the Red-baiters.

Q. Is this something that you have been known—

A. Yes.

Q. —for some time?

A. Well, I'd say about 13, 14 years.

Q. Did you ever know Allie Brodose?

[fol. 173] A. Yes, I did.

Q. Did he have a reputation in the plant as far as his politics were concerned?

A. Well, he was known as a Communist. He was one of the people I Red-baited.

Q. Did you Red-bait persons who were not Communists?

A. I Red—I Red-baited any member or anybody that supported the ticket in which Brodose or any Commie or Trotsky headed.

Q. Was that even if you had no information or knowledge that a particular individual was a Communist or a Communist follower?

A. Well, as you understand union politics—

Q. Well, I might, you see, but we want to explain this to the Board.

A. Oh, understand union politics; I mean, if you really wanted to do a job on the guy, you had to Red-bait him. And you usually Red-baited a man because of his followings. Like Brodose was the—to me—to me—he was a known head of the CP party in Bell Aircraft, the same as maybe Frank Vos or Art Hansen, or any of them guys were the practically, say, the titular head of the Socialist Workers Party in the plant. The same as Vince Copeland, a few people like that. Them are the people that I Red-baited.

Q. Well, did you—

[fol. 174] A. And I've Red-baited any of their—

Q. Followers?

A. —followers, or anybody that supported them.

To me it was wrong. To me it was right in what I was doing in exposing them, even if I had to Red-bait them.

Q. Have you Red-baited Charles Taylor?

A. Very much.

Q. Have you ever had any information or knowledge directly or by hearsay or gossip or anything, which caused you to believe that Charles Taylor was a Red or a Communist?

A. Well, I've only Red-baited Charlie Taylor one thing, and I never let him down on it, I never let off of him. And that's because he appeared on the ticket they had one time that Allie Brodose ran as president.

Q. Aside from that, aside from his association with the Brodose ticket, did you ever have any information or knowledge—

A. No.

Q. —to associate Charles Taylor with the Communists?

A. Not the basis for it, no, sir.

Q. Now I show you this beat up Unite and Win dated March 16, 1943, of which the Board has a copy. What exhibit number is that, Mr. Leone?

Mr. Leone: March 16th?

Mr. Lipsitz: Yes.

[fol. 175] Mr. Leone: 1.

By Mr. Lipsitz:

Q. That is Exhibit No. 1. Is this the paper you had reference to, where his name appears?

A. That is correct.

Q. This is your property, is it not, what you are looking at?

A. That's right, this is my property. This, as you can see, I had this in my tool box for a good many years.

Q. And you let me have this in connection—

A. That's right.

Q. —with the preparation of this case; is that right?

A. Here, yes.

To me this is the people that supported the Unite and Win.

Later on the Unite and Win was exposed as being CP. Then they come out with the Unite and Build, which was another name of their paper. And then they come out with—well, I have to change my mind just a little. After these Commies were sus—exposed on the Unite and Win and Unite and Build, then they had a revolt in the caucus, and a new leadership took it over, and they called themselves "We the People," and so forth and so on—by various other titles.

Q. My question is, it is this paper on which you based your Red-baiting of Charles Taylor?

[fol. 176] A. That's right, yes, here's—

Q. Let me ask you the next question: Have you Red-baited Robert Siegler?

A. All of them.

Q. What?

A. All of them.

Q. Every name that's appeared on there you have Red-baited from time to time?

A. That's right, that's right.

Q. Has there been an occasion of fairly recent date where you Red-baited Taylor in the presence of two workers, one of whom is known in the plant as "Crazy Frank"?

A. "Crazy Frank"?

Well, there is a little story there, but I could tell you the story.

Q. All right, tell us.

A. Well, you understand that I like to dabble in union politics. And at various times I support people for office.

Well, one, the president that we have now, his name is Walter Stanitsky. And Walter was campaigning for president, and he had the support of these two fellows that we are talking about.

Q. All right, now, what are their names?

A. Frank Krantz and Dick something—I don't know his [fol. 177] last name.

Q. Is it a name that appears to be Polish?

A. Yes, it is.

And I guess they were soliciting votes for Stanitsky, and they must have went over to Taylor, and Taylor must have given them a hard time.

And they got in somewhat of an argument.

They come over and talked to me, and I brought out this paper and showed where Charlie Taylor ran with the then known Commies.

Q. And did you—

A. So I've Red-baited him within the past two years, I would say.

Q. Did you hear afterwards that these two fellows had made reference to Charles Taylor as a Communist?

A. And then, on, about—about six months ago I heard that these two fellows went to Taylor, and they accused Charlie of being a Commie, and they told Charlie that they could prove it.

And Charlie said, "Go away," from what I understand.

And they said that they can prove it by McGovern.

Q. Apparently referring to the conversations that you had with them?

A. That's right, evidently referring to this.

Q. Now, all right, have you ever been interviewed by [fol. 178] somebody from the Federal Government, the FBI, or otherwise, about Communist activity in the plant?

A. At numerous times.

Q. Have you ever been asked any questions about Charles Taylor?

A. Never.

Q. When was the last time that you were interviewed by anybody representing the Federal Government?

A. Well, the nearest I can recollect, about five, six years ago.

Q. Would you place it after the strike at Bell Aircraft?

A. It was definitely after the strike, yes. They were more or less concerned—

Q. Well, I just—

A. —about some people that had been ruled out by a fact-finding board.

Q. By the way, as far as placing it in time, it was after the strike?

A. It was after the strike, yes.

Q. During 1941, 1942, and 1943, were you familiar with what was known as the Communist Party line in politics and foreign affairs, and things of that nature?

A. Yes, I was.

Q. Did you ever hear the Communist Party line advanced by any people in the shop, such as Brodose or others?

[fol. 179] A. Well, as I say, just papers like this.

Q. Well, did you ever hear talk about supporting Russia, a second front, or anything?

A. A second front, yes, that was the tenure of the labor-management committee, was for the—they had a labor-management committee set up for the purpose—the purpose of 10 hours a day, all-out piece work, and stuff like that.

Q. Well, were some of these programs advanced by people in the local union who were the Commies, or the Commie followers?

A. Well, mainly by them.

Q. Yes, all right.

A. Such as Freda Werb, Alvin Taylor—and that's where I believe that, to me, outside of Red-baiting Charlie Taylor, I actually believe that's a case of mistaken identity, because if he was to associate Alvin Taylor with the Communist Party it wasn't Charlie Taylor, it was Alvin Taylor, because Alvin Taylor after Brodose was exposed for what he was, as a leader for the Communist Party in the plant, he was the second string that ran for president instead of Brodose.

Q. All right, did you—

A. Along with a guy by the name of Freddie Boschert, for chairman of the top committee, which were the two main offices that they tried to control.

Q. Is this Boschert the one whose name appears on Exhibit 5?

[fol. 180] A. Yes, yes, Fred Boschert. Fred Boschert, yes.

Q. Did you ever hear Charles Taylor advance what you know to be the Communist line?

A. I don't believe I had 15, 20 words to say to Charlie Taylor in my life.

Q. In other words, you didn't know him personally? You only knew of him?

A. I knew him personally—I knew him—I knew where he worked. I knew him for what he was. I can't say he—I never got in political arguments with him, let's put it that way.

I don't believe I ever said hello to him, but I knew who he was. I knew who he—he represented 40 department, which was at one end of my department, and that was none of my business down there.

Mr. Lipsitz: That's all the questions I have of this witness.

Chairman Waldman: Mr. Leone?

Cross examination.

By Mr. Leone:

Q. Mr. McGovern, why, speaking now of that incident that occurred a couple of years ago, did you make it known

to them that Charles Taylor had run on a slate which was led by Communists, or Communist sympathizers?

A. Well, as I say, I supported a man for president, [fol. 181] and naturally anybody—union politics, if you support a man, you defend him.

And Charlie Taylor was very critical of my choice for president, probably made some derisive remarks, or something like this.

And they said, "Well, that guy's got a hell of a lot of nerve to talk. Here, look who he was running with." And I showed his name on the Allie Brodose. Allie Brodose had always became a symbol of the Communist Party at Bell Aircraft.

Q. Excuse me,—

A. In other words "You have got a lot of nerve to talk. Look who you were running with."

Mr. Lipsitz: So that the record is straight, when you refer to your choice you are referring to Stanitsky?

The Witness: That's right.

By Mr. Leone:

Q. You mean to discredit—

A. Charlie Taylor.

Q. —Taylor?

A. That's right.

Q. To show that he might have been a Communist sympathizer?

A. I don't believe that you could ever single out one man as a sympathizer, in this respect, that all these people went down to the union membership meetings, and we had the [fol. 182] Commies, who were the head of the union, so you couldn't very well say that all of them people were Communist sympathizers. In other words, my whole tenure in the union as long as I have ever run for the union, I tried to be a good trade unionist. The Communist Party and the Socialist Workers Party, and also the Workers Party, were using the labor movement for their own—to further their own policies, or whatever they were. And I just took it upon myself as a one-man crusade to expose them.

Q. However, whether you intended to or not, the result of it was that these individuals believed that Charlie Taylor was a Communist or a Communist sympathizer?

A. Well, that was the general intent, and which I meant, yes, sure.

But as I say, this—he is entitled to play his politics the way he wants, I was entitled to play my politics the way I want. The point that I am trying to get over is Red-baiting, as long as I have been in Bell Aircraft, up until the last, maybe, year, year or two and a half, has always been to Red-bait a guy to discredit him.

In other words, I have always Red-baited people who I believe supported the—the people who had control of the union. I have realized this—you see, I went to—to the union on my own.

My—my presence here—my presence here was not solicited by the union, I volunteered it to the union; that I [fol. 183] believe that in all my years of Red-baiting Charlie Taylor, that the reason he—he's here, because I'd Red-baited him.

Q. You think that you are in some measure responsible for these proceedings?

A. That's right.

And I believe— I actually believe in my own heart that in Red-baiting him to these latest two guys, it is a little the reason that it's been brought to the attention of the Security Board. Because these two fellows are known as Cohn and Schine—I mean, they were the two guys, if you remember on the McCarthy hearings, that were doing all this accusing, accusations, and things like that. And that seems to me, that all they do is go around that plant blasting everybody. In fact, they are known as Cohn & Schine.

Q. You are known as the chief, or the king of the Red-baiters; and did you earn that reputation because you had any knowledge over and above the others?

A. Well, let's put it this way: I am probably the—one of the oldest active union members. In other words, there is very few guys in length of service that have been as active as I was in the union.

Now, I've put in nine straight years in it, as a steward, and I doubt if anybody has got a—a record that long as

being a consistent representative of the union. And I knew all of these people.

[fol. 184] And naturally when they wanted to do like—like I have been Red-baited myself, I have been castigated, pillored (sic) and everything, from—

Q. I think you misunderstood my question: my question was: Did you earn this reputation as king of the Red-baiters because you knew more about it than anyone else?

A. As I say, it was—

Q. How did you earn the reputation?

A. Every time I done a job on somebody I Red-baited them. Like I've Red-baited Frank St. George, Whitey Vos, Art Hansen—and I had reasons to, because I knew they were members of the Socialist Workers Party.

Q. Now—

A. And naturally in their defense, in their defense they would say I was just a Red-baiter—"Oh, Mac, to talk to Mac, that Red-baiter."

Q. Did you know that Allie Brodose was a Communist?

A. I didn't know that he was a Communist—I can't actually say that he was a member of the Communist Party, but it was an accepted fact that he was the leader of the Communist Party in Bell Aircraft.

Q. Did you know any more about Allie Brodose than anyone else in the plant regarding his Communist sympathies?

A. No, I don't believe I did. I don't believe I did.

I did know that he was president of the union. I have [fol. 185] talked to him two or three times, but that's about all.

Q. Have you ever considered Charles Taylor to be a Communist or a Communist sympathizer?

A. No, I've only condemned here for—I've condemned him at all times. I don't believe I've ever let off on Charlie Taylor. In this one respect: that he ran with Allie Brodose. That's the basis for all my charges.

And as I say, as late as a year and a half ago I still Red-baited him.

I'll probably get back to the plant and still Red-bait him.

Q. Well, do you feel that Charlie Taylor was a Communist sympathizer?

A. No. No, no, what I am trying to show that in union politics we Red-bait a man—like I've Red-baited Siegler. Here (indicating exhibit) Tom Page. Siegler— Well, them were the only two there that are left here yet, outside of Taylor, but the rest of them are all gone.

And here, like Sam Meyers, I've Red-baited him. But them are the only people that are left.

Q. If I understand you properly—

Mr. Lipsitz: Excuse me, may the record show that he is referring to his copy of Exhibit No. 1.

The Witness: Yes.

By Mr. Leone:

[fol. 186] Q. If I understand you properly, in the event of a dispute, no matter what the issue might be, if one of the individuals who have appeared on this slate disagreed with you, you would feel that one of the arguments you could use against this individual is that he was a Red?

A. That he ran with the—

Q. Well, that's what—

A. Allie Brodose.

Q. Well, that's what Red-baiting means?

A. Yes; I know what Red-baiting is. I mean, there's nothing that will kill a man in the union quicker than to Red-bait him.

Q. Is it your testimony now that you are coming here before us to tell us that you do it, but you don't believe it?

A. As I say, it's union politics.

Q. But is that your testimony, you do it but you don't believe it?

A. I'd say yes.

Q. Do you know Mr. Taylor socially?

A. No, I don't.

Q. Have you ever been in his home?

A. No, I haven't.

Q. Has he ever been in your home?

A. No, sir.

Q. Do you know a person by the name of Clara Lester?

[fol. 187] A. No, I don't.

Q. Sam Weisman?

A. No, sir.

Q. Have you ever heard the names?

A. I probably—

Q. Either of them?

A. I can't recollect right now, but if—maybe at the time, if they were prominent people, I probably would have read about them.

You see, I was only interested in one thing, and I—to me Bell Aircraft union politics was a hobby of mine, up until 1949-1950. I resigned, and I haven't been active since. But it was a hobby of mine.

Q. Does the name of Jim O'Connor mean anything to you?

A. There was an O'Connor worked in the foundry. And he was very close to the Communist Party at that time. In other words, he is another that used to spout their line. If it's the same O'Connor.

Q. Do you associate that O'Connor with Taylor? And this is Charles Taylor that I am speaking of.

A. No, I would associate him more with Alvin Taylor. In other words, they were on the team.

Q. And Freda Werb?

A. Freda Werb, I would associate—that was the old—[fol. 188] that was that clique.

Q. And do you associate Freda Werb with Charles Taylor?

A. No.

Q. Have you ever seen them together?

A. No, I haven't.

As I—if I remember right,—Freda Werb worked on the same shift as I did. She was over in 38 department, on the wing section, and that is, oh, I'd say about four, five hundred feet from where I worked. And I worked on one end of the department which Taylor worked, and also Taylor worked on the first shift, if I remember right.

Q. At the time of the election in which Allie Brodose was one of the candidates and Maturski was another candidate, was it your understanding at that particular time the issue was Communism?

A. That's right.

Q. Do you feel that the Communists supported the Brodose slate?

A. Absolutely.

Q. Would that include all the individuals on the slate?

A. No, I wouldn't say that. I'll tell you why: I had a good friend of mine, a guy by the name of Johnny Warren—

Mr. Lipsitz: W-a-r-r-e-n?

The Witness: Yes.

[fol. 189-199] (Error in numbering. Nothing omitted.)

And at that time John Warren was a steward of mine, I guess. And without his knowledge they put him on the same slate as theirs, and he got elected as a zone committeeman. That was at the time when they used to elect their own zone committeeman right along with the general election.

Do you remember that, Charlie?

Mr. Lipsitz: Go ahead, he can't answer you.

The Witness: Oh, I see. This is—

And I do know at that time that John Warren was not a Commie, but—so on the same basis I can't say that all the people there were Commies.

By Mr. Leone:

Q. You didn't answer my question.

A. I said no. I'd say no.

Q. My question was: Did the Unite and Win slate which had as its head Allie Brodose, get the support of the Communists?

A. You know, you're—you're putting it rather in the—a light in which it—what I'm trying to say is this: to me Allie Brodose was the head of the Communist Party in Bell Aircraft. But it wasn't everybody that knew that Allie Brodose was a Commie, or was suspected of Com—as being a Commie. So if he chose to ask somebody if they wanted to run for office, they would consent to it, not knowing that he was a Commie, so that they would later become tainted [fol. 200] with Allie Brodose.

Q. You still didn't answer my question, but I won't pursue it any more.

A. I'm trying to answer it to the best of my—

Q. Yes; all right, is it your impression, therefore, that Charlie Taylor having been a member of the Allie Brodose slate was not aware of the fact that Allie Brodose was a Communist or a Communist sympathizer?

A. Well, I'll put it this way: to me Charlie Taylor was an active union man, because after the expose of Brodose, or in subsequent elections, Charlie Taylor ran on tickets that were adversely opposed to the Commies.

What I am talking about now is the Independent Progressives; I'm talking about the Progressives; I'm talking about it might even be the Rank and File. That was another slate.

Mr. Leone: I have no further questions.
Chairman Waldman: Commander Dunstan?
Commander Dunstan: I have no questions.
Chairman Waldman: Mr. Simms?
Mr. Simms: No questions.

By Chairman Waldman:

Q. Mr. McGovern, I think that Mr. Leone asked you—at least somebody did—as to whether or not you had given information in the past to some government investigative [fol. 201] agencies, such as the FBI, or similar agencies, and you answered that you had?

A. Yes.

Q. I think you said the last time you spoke to somebody from a government investigative agency was after the Bell Aircraft strike?

A. That's right.

Q. Did you have any conversations with any investigative agency personnel prior to that time, as well—that's before the Bell Aircraft strike?

A. Yes, I believe I did. There was a—a man by the name of—I'll think of his name.

Q. You needn't give us his name; did you or didn't you?

A. Yes, he come over to my house and questioned me.

Q. On more than one occasion did this happen, or—

A. No, I think it was just on one occasion.

Q. I think you were asked whether or not any of the investigators asked you about Charles Taylor, and you said they didn't mention him?

A. That's right, that's right.

Q. Did you volunteer any information to any of these investigators as to who you thought might be a Communist at the Bell Aircraft plant?

A. No. They have asked me—like they'd pick out various [fol. 202] names, and ask me what I knew about them.

Q. And the name of Charles Taylor was not one of the names?

A. Never—never brought up, no, sir.

Q. Was the name of Alvin Taylor?

A. No, sir.

Q. Was that name brought out by them?

A. No, sir. I wouldn't mind saying this, that—their questions were to the effect that—in fact, it's very much in which Charlie has been accused of here, if you don't mind me saying.

Now, I say this, and they said this to me: "Now, you claim that you have always fought the Commies and the subversive elements in the plant. Now, we have here the name of Don Slaiman. You supported him for election."

And I tried to point out to them that all I was interested in was in getting a group and—these groups are open, anybody can come in—where with me, nothing what Slaiman is or was or been accused of, I still didn't have enough power in the caucus to thwart his being nominated. So naturally when you are in a group, whether you run as a candidate or not, you still are pledged to support them in the coming elections. And that's what they more or less were interested—the whole thing was the Socialist Workers Party, that's what they were interested in.

[fol. 203] Q. All right, now, Mr. McGovern, if you can remember during the years 1942 and 1943, were there individuals in the Bell Aircraft plant who either brought in or circulated what we would consider to be Communist Party literature, such as the Daily Worker or the New Masses, or publications of that type?

A. Well, the closest I ever come to seeing any of that stuff in the plant was some literature brought in—well, this wouldn't be in the years that you are talking about, no; this was brought in in 1945 and '46 at the—the fight with Reuther. But you are not interested—

Q. No, I am talking about—

A. You are talking about them years—no.

Q. I am talking about during the period when Mr. Charles Taylor was on the Brodose slate, just about that period.

A. No, I don't remember anything about it then.

Q. Do you remember at that period of time whether it was the practice of any union people to disseminate through the plant petitions for the nomination of candidates who were running for office in the state, local and governmental offices, outside of union offices?

A. Not in them years, no, but later on, yes.

Q. About what time would be later on?

A. '45 and '46.

Q. You have no recollection, I would assume, that Bro- [fol. 204] dose himself was ever involved in either circulating Communist literature at the plant—

A. No, he was a speechmaker, strictly talk, all talk. He's a great spellbinder. He had a gruff voice, and he really could hold an audience, and he'd feed them the Commie line, and get his supporters that way.

Q. Have you seen the statement of reasons that was issued to Mr. Charles Taylor in this case—that is the charges?

A. Yes.

Q. Have you seen them?

A. Yes.

Q. And you saw that it was alleged in the statement of reasons that during 1942 and 1943 Charles Taylor was a Communist Party member; is that right—at least you read those charges?

A. Yes, I have.

But I can say this on that: by the way that Charlie fluctuated from the—to the anti-Brodose—I mean, actually we knew what Brodose was, and there was a—practically a crusade against—against Brodose. And I find that Charlie's name appears as a candidate opposed to Brodose. In fact I was very interested in that progressive group, because I believe that I was one of the—I was very instrumental in beginning that group. And that was strictly opposed to the Commies.

And then to me later on, which was in about '44 they changed their names to the—they were independent pro-

[fol. 205] gressives, and later become independent—the Rank and File, which then became dominated by the SWP.

Q. I will ask you again, Mr. McGovern: You have seen in the statement of reasons that it is alleged that during 1942 and 1943, for some period, that Charles Taylor was a Communist Party member; and further, that he was in a certain branch of the Communist Party, and that he is alleged to have paid his dues. My question, sir, is: Is this the first knowledge that you ever had of these allegations?

A. Yes.

Q. The knowledge that you got from the statement of reasons?

A. That's right.

In fact, I was shocked.

Chairman Waldman: Mr. Simms, do you have anything?

By Mr. Simms:

Q. Mr. McGovern, is it your opinion that Mr. Charles Taylor ever had a sympathetic interest in the Communist Party, even if he weren't a member?

A. Will you repeat that, please?

Q. Do you think the subject, Mr. Charles Taylor, ever had a sympathetic interest in the Communist Party, even if he weren't a member—and by sympathetic I mean interested in their principles and generally things of that nature, if that will assist you?

A. No, I think Charlie Taylor, just like me, played poli-[fol. 206] tics. In other words, he—he never was sympathetic with it, he just was interested in union politics—he was interested in union office.

Q. Do you feel that there was any disposition on the part of the employees at Bell Aircraft to mix up, so to speak, Mr. Alvin Taylor, whom you said was a member of the Communist Party, with the subject, Charles Taylor?

Mr. Lipsitz: Excuse me, Mr. Simms, I have to object, because I don't think the witness said that Alvin Taylor was a member of the Communist Party—whatever he said I think was something short of that.

Mr. Simms: You may strike this off the record. My belief is that he said Mr. Alvin Taylor was associated with the Communist Party.

Mr. Lipsitz: I think that's more nearly accurate. And he explained that it was Alvin Taylor's taking the case of Brodose as a candidate that was the basis for his making that statement.

By Mr. Simms:

Q. Let me rephrase the question, and ask you this: Was there any general disposition on the part of the employees at Bell Aircraft to mix up Mr. Charles Taylor with Mr. Alvin Taylor?

A. I believe that only mentally—in other words, it is my idea that they got—not the general feeling in the shop—[fol. 207] it is my idea that they have got Charlie Taylor mixed up with Alvin Taylor.

Q. It is your idea, not the—

A. That's right.

Q. —idea of the employees there?

A. That's right. Because I haven't discussed it with anybody, but when I heard he was brought up on charges for being a card-carrying member, that's when I come to the fore, and I said, "No, I think that's wrong, I think they have got him confused with Alvin Taylor, who substituted for Allie Brodose's when Allie Brodose was exposed as being the head of the Communist Party in Bell Aircraft."

Mr. Simms: Nothing further, Mr. Chairman.

By Commander Dunstan:

Q. Mr. McGovern, did you ever hear of a Branch B and C of the Communist Party?

A. No, I didn't.

Q. Or Branch 12?

A. No, I didn't.

Q. During the period of 1941, 1942, 1943, were nominating petitions circulated around the plant or throughout the union meetings for local office in the City of Buffalo?

A. You mean of local—for local union office?

Q. No, local political office.

A. Not to my knowledge.

[fol. 208] Q. In other words, nobody said, "Well, let's elect Joe Smith here?"

A. No.

Q. And "Sign your name"?

A. No, not to my knowledge. In fact, I've never seen any of that in the plant.

Q. A nominating petition?

A. That's right, I've never seen any in the plant, no, sir.

Q. Or outside?

A. No, or outside, either.

Commander Dunstan: I believe that's all I have.

Chairman Waldman: Mr. Lipsitz, do you have anything further from this witness?

Mr. Lipsitz: No, sir.

Chairman Waldman: Mr. McGovern, you may be excused.

(Witness excused.)

Chairman Waldman: I suggest we take our luncheon recess, and come back at one o'clock.

(Whereupon, a lunch adjournment was taken.)

[fol. 209] AFTERNOON SESSION

Chairman Waldman: Mr. Lipsitz, who is the next witness, please?

Mr. Lipsitz: Wilbert Rowe.

Chairman Waldman: Mr. Rowe, before you testify, it is my duty to inform you that Section 1001 of Title 18, United States Code, makes it a criminal offense, punishable by a maximum of five years' imprisonment, $10,000 fine, or both, to make a false statement or representation to any department or agency of the United States as to any matter within the jurisdiction of any such department or agency. Do you understand that?

Mr. Rowe: I do.

Whereupon, WILBERT ROWE, called as a witness on behalf of the Respondent, was examined and testified as follows:

Chairman Waldman: Would you kindly state your full name and residence address to the reporter.

The Witness: My age and my residence?

Chairman Waldman: Your full name and residence address.

The Witness: Wilbert Rowe, 100 Richmond Avenue, Buffalo, New York.

Chairman Waldman: Will you proceed, Mr. Lipsitz?

[fol. 210] Mr. Lipsitz: Yes.

Direct examination.

By Mr. Lipsitz:

Q. Are you employed at Bell Aircraft?

A. Yes, sir.

Q. How long have you been employed there?

A. 16½ years.

Q. In 1941, 1942 and 1943 where were you employed, at which facility?

A. The Elmwood Avenue plant.

Q. What department did you work in?

A. 51.

Q. What is that known as, what is the name of it?

A. The press department.

Q. Press department?

A. Yes, presses.

Q. Was that located near or about the tool room, or a different part of the plant, or what?

A. Well, from 51 department—the machine shop and the tool room is more or less combined, and the only thing in between 51 was the aisle. See, our department extended some—well, from the cafeteria, which was the end of the building; then the cafeteria, then 51 department went up the aisle and across the aisle, and 43 department, the tool room, following that department. Very close by.

[fol. 211] Q. Do you know Charles Taylor?

A. I know Charlie Taylor very well.

Q. How long have you known him?

A. I'll say I know Charlie Taylor back till '41.

Q. Did you get to know him as an employee at Bell Aircraft, did you know him before?

A. As an employee of Bell Aircraft,—I did not know

him, but as a member of Local 501 I got acquainted, and our associations was mostly through union business.

Q. In other words, you didn't get to know him through working at the plant as a worker, but through the union?

A. Union activity, yes.

Q. Have you ever held any office in the local union?

A. Yes, sir, I held office for about 11 straight years.

Q. Well, which office?

A. That was the first, from 19 & 40 to 19 & 50—yes, 19 and 50.

Q. What offices did you hold during that period?

A. I was zone committeeman—or steward for one year—zone committeeman for five years, top committeeman three different times. A member of the executive board one year, and I believe a steward another year.

All told it was 11 years of representation, up to 19 and 50.

Q. Did you know Allie Brodose?

[fol. 212] A. I knew Allie Brodose very well.

Q. I show you what have been marked as Exhibits 1, 2, and 3, and ask you if you ever remember seeing these slingers?

A. Oh, yes, very much so.

Q. Very much so, all right.

A. Yes.

Q. Were you ever associated with Brodose in running for a union election?

A. Yes, I supported Brodose in—I was in his group.

Q. When was that?

A. That was when he was elected president, in '42, I believe.

Q. Well, he was only president once, isn't that correct?

A. Yes, that's correct.

Q. And if he was defeated in '43, then he was president in '42?

A. That's right.

Q. Were you ever a member of the Communist Party?

A. No, definite.

Q. Now, we are going back to those years 1941 and 1942 and 1943; did you ever know or believe that there were any members of the Communist Party in the plant, or party line followers?

A. Yes, we definite had members of the Communist Party.

Q. You did have?

[fol. 213] A. Yes, we did definite have our share of them. I believe that Local 501 had the greatest number of the left-wing movement in the labor history.

Q. Well, particularly now relating to the Communist Party, were there some in the plant who were considered to be and generally were known as Communists and followers of the party line?

A. Yes, Brodose was definitely a Communist.

Q. Who else?

A. Well, Freda Werb; a fellow named Sustar, in the machine shop.

And there was others that isn't working there no more—I don't recall their names, too well. A guy by the name of Kramer. The ones that I know, the—the most was the active ones in the union, and Brodose was the most active one. And the rest of them—and most of them were group arguments on the floor, but those was more or less the ones carrying the ball in each of the arguments.

Q. How did they, to you, at least, become identified as Communists, by their actions, their speech, or questions; or how did you get to know that any of them were Communists?

A. Well, Brodose here I—he talked to me about 11 hours at one time about his Communist belief, how he would—he'd been in Russia, and how he would—how he took his shoes off, he took his shoes off and give it to a person on [fol. 214] a dock, when a ship docked at Russia. He said he was only sorry he couldn't give him all of his clothes—he thought very much of the people over there.

Q. Did he ever talk to you along the lines of interesting you in the Communist Party, or soliciting your membership, or anything like that?

A. Well, he never tried exactly to solicit me into his group; he was more or less trying to get me to lay off his group.

Q. His group containing the Communists?

A. Yes.

Q. Now, you knew Charles Taylor in those days; isn't that correct?

A. Yes, I knew Charlie Taylor.

Q. Did he ever promote the Communist Party line, or the point of view in the shop?

A. No, that's—that's absolutely definite. If he ever did, I wouldn't be here in this meeting today.

Q. At least you wouldn't be here to give testimony—

A. If it was Allie Brodose—if it was Allie Brodose on trial, I'd be in Buffalo.

Q. What is it in your recollection that disinguished Charlie Taylor whom we know to have been a member of the caucus, that is, to have run on the same slate, according to this slinger, that distinguished him from those you [fol. 215] identified as actually Commies, or followers of the party?

A. Well, when I belonged to the group that Brodose was heading, let's say, I was more active than Charlie was. In fact, Brodose never had a car. I was more or less his means of transportation back to the caucus meetings and to the union meetings, and—and to the plant. A couple times he rode with me.

Other membership meetings I'd pick him up at his house. I have been at his house, met his wife and children.

You see, I was a more active member of that group than Charlie was. I fact, I never classified Charlie as an active member of—of Brodose group.

He was an active member in the union, but not an active member in that particular group.

Q. Well, you arrived at that conclusion; was there some activity in which Charles Taylor participated, some stand that he took that caused you to arrive at that conclusion?

A. Well, in the—in the union politics, each leader has what you say key people.

Q. Talk to them, not to me.

A. Oh, excuse me.

(Continuing) They have key people, where they consult and talk about the various movements in the union. And Charlie was never in—included in that group, where I was. [fol. 216] I was included in—in most—most all of the meetings that we held on various—well, we had supervisors, some of them was pushing the workers too hard; and our different strategy, that we were going to take to counteract

the—the supervisor, or if it was—unless you were in the local that was coming up to the membership meeting where we wanted to gang up on the issue and win it at the membership meeting, Charlie was never included in one of those little get-togethers; that's why I say that he was not an active member. He supported the group; he was not one of what you say, the inner-circle groups.

Q. You are talking specifically about the Unite—

A. That's right.

Q. —and Win caucus at that time; is that right?

A. Yes, sir.

Q. When you say a little group, is this a correct statement, that within the caucus there would be a smaller group that more or less tried to set policy and set up people to make motions at meetings, and to offer resolutions, and to second them, and to make speeches, et cetera, et cetera?

A. That's true. It always—

Q. Is that a common caucus tactic?

A. That's right. Caucus within a caucus.

Q. And you definitely know that Charles Taylor was not within that little group?

[fol. 217] A. No, he was only outer circle. What we had, if we had decided on a decision to take at the membership meeting on a proposal—well, take the 10-hour week proposal, the plant is going on a 10-hour week. Well, we was against that, because it would do away with the third shift, and naturally we thought it was a—it was a bad move at the time—which later on was proven, I believe, by the State Department, that it was a violation of certain—certain law —I don't know which.

Anyway, they got it out of their mind, but we went up more or less in arms against it, and naturally we got to go to decide on what policy we was going to take to oppose it. Well, you decide—well, Charlie then, being a committeeman, he—he would be told what the position the union was going to take. It was really the position that we decided on. It wasn't—so naturally there was four or five people running a political group like this.

But we had many stewards, many committeemens that would go along with the—with our proposals.

Q. Did any of the people that you classified as Com-

munists, or at least close followers, such as Brodose, interest themselves in foreign affairs?

A. Yes, they did.

Q. What was their particular point of view about foreign affairs?

[fol. 218] A. Well, they had—after the war—of course after the war I—

Q. You mean after the war started?

A. After the war started their position was pretty phony.

Q. What do you mean "phony;" describe what it was?

A. One of their positions was—they give us an example that a man is standing on the river bank, and somebody would come up and push him into the water. You don't fight that man, you fight to save yourself.

Now in this case here he says they are into a war, so they are not fighting the capitalist class no more, they are fighting to save theirself. And after the war they would fight the capitalist class again. But at the particular time they must save themselves.

Q. And therefore you have to cooperate with the Russians and the Americans, that are cooperating; is that it?

A. Yes, they became very super-patriot, they was more patriotic than we was.

Q. Did Charlie Taylor ever promote that view or that line?

A. No, that was—this was—that was strictly the position of Brodose and members of his political group.

Q. Go ahead; were you going to say some more?

A. The reason I was mostly in their conversations was that they more or less accepted me, because I was a li'le—[fol. 219] a little more active than most of the guys at that particular time. I was very active in the union then, and they didn't think there was anything wrong by talking in front of me. Which none of them—during the war they ddn't hesitate to tell you they was a Communist, they brought their papers in the plant as if it was the Buffalo Evening News. It was our allies so they didn't see anything wrong.

Q. Now, in connection with the kind of atmosphere that existed at the plant, are you familiar with any pictures of Stalin that may or may not have been hanging in the plant?

A. Yes, we had one hanging up in the plant.

Q. Where?

A. In Larry Bell's office.

Q. He was what at the time, of the corporation?

A. Larry Bell was the president of Bell Aircraft.

Q. Were there Russian military personnel in the plant?

A. I don't know if they was military personnel or not I met, but our labor relations were situated close to the Factory Manager's office, and being a committeeman I spent considerable time in labor relations. This particular time —and Mr. Emil Lapsley was the factory manager, and his door was open; he seen me in the hallway, he called me in.

Q. What year are you talking about?

A. That was in '50.

[fol. 220] Q. '50?

A. No, no, about '43. He called me in the office, and from his office you can look down on the floor, you see a— a lot of tables, maybe 200 or 300 girls and fellows lining up metal, with a hammer and a piece of fiber. So Emil Lapsley asked me to tell these gentlemen what the rate was down there, what type of rate was, that they had the hourly rate.

So he turned to these fellows, in other words, to say, "Well, you see."

So I says, "Why?"

"Well," he says, "These fellows thought it was piece work."

And he introduced me to them. They was two Russians.

"Why," I says, "they have piece work in Russia?"

They said, "Yes, this type of work here is piece work in Russia."

"Well," I said, "that's something I'm very proud to say, is we don't have piece work in Bell Aircraft."

You see, one of the positions of the Communists in this country was that Russia was a true workers' state, and their conditions over there for the workers was much better than the conditions over here; which I found that it wasn't, and exposed that position as being phony.

Well, from then on in the war I was pretty active, exposing their position. I didn't try to get them actually out [fol. 221] of the plant or anything, btt I did when I meet them on the floor—and I went out of my way to meet them—

did draw them into arguments for the purpose of exposing their line and their position as being a phony position.

Q. Was one of their positions in favor of a piece work or incentive plan?

A. Definite, definite.

Q. Do you know where Charles Taylor stood in relation to that?

A. Charlie Taylor was not for piece work. It wasn't the policies of our local at that time, it wasn't the policy of the UAW.

Q. There were some people in the local pushing it; is that correct?

A. That's right.

Q. Were those the ones you identified as the Communists or the Communist followers?

A. Well, they pushed it—the Communist Party pushed it as far as their leaders could carry that position in the various plants. In the textile—not textile, but electrical workers, and, well, quite a few of the plants, they was able to push it in, but in a plant like ours they couldn't do it. It would be political suicide, the way we had put the union in.

Q. Did they try it?

[fol. 222] A. Oh, yes, they tried it, but it didn't work.

Q. Do you recall the time when Joseph Rosmyslowski and James Schuetz were discharged or disciplined by the company?

A. Yes, I recall that very well. I was—being on the third shift, the day-shift stewards and committeemens came into the labor relations, and those of them on the third shift that was—had business overlapping on to the day, we would meet with the—you know, both shifts.

And I knew of 40 department's trouble right along. I knew—I seen it coming up to an explosion.

So we had a—a woman labor relations representative, and she more or less exercised her—her sex. I mean, if she liked you, if you was a steward, you won your grievances. If you didn't like—if she didn't like you, you didn't get nothing.

Well, Jimmy Schuetz was one of the guys she didn't like. She didn't like him for nothing, and he didn't get nothing.

and he was one of the representatives in 40 department. And she told me, "I wouldn't give him the right time of the day."

I said, "He's a union committeeman, you got to give—" —he was a chief steward, I believe, at the time, wasn't he?

Q. You tell what you recall of it.

[fol. 223] A. Well, at any rate he couldn't settle a grievance up, and the grievances was really piling up.

Finally the men in the department—I seen the grievances was—oh, I'll say a stack like that (indicating), and it was —they was of the nature that should have been settled, they should never have been left unsettled, or most of the stock answers she would give "Grievance denied."

Q. Let's not get into too much detail about those, but you said you saw this building up, and you remember when they were discharged by the company?

A. That's right.

Q. Did you have any conversation with Charles Taylor in relation to that discharge?

A. Yes, we—we talked up—we talked before they was discharged.

Q. What happened, did the company first discipline them before they discharged them?

A. Yes, they was—before the walkout they was discharged as being instigators. That was the wind-up of the grievances.

And the men walked out.

Q. Did you have conversations with Taylor about this?

A. Yes, I talked to Charlie.

Q. Do you remember what he said about it, or what you said about it at the time?

[fol. 224] A. Well, there was—it was one of those—when they—when we have a walkout facing us, our union representatives, it's more or less a hopeless position, there is very little that a union representative can do, because once the men gets riled up, and they are going out, they are going out. And that's what happened in this case. Their grievances was unsettled, and they felt that they—the only way to settle them was to walk out, regardless of their union rep.

It takes a mighty good union rep, and he's got to have a gun in each hand, to stop those people out once they start moving.

Q. You say you had conversation with Taylor about it; is that correct?

A. That's right.

Q. What do you remember his saying?

A. This is the same old story, that there was nothing you could do about it, the men was going to walk out.

Q. In relation to Schuetz and Rosmyslowski, did Taylor say anything to you, whether he was supporting them, or against them, or what?

A. Well,—

Q. Or did he say anything like that?

A. No, I don't recall that conversation there—

Q. All right.

A. —he was supporting Joe or not. It wasn't a case of [fol. 225] supporting any individual or anything like that. It was—when we have a walkout, it's—it's a position that, "What's our next move to get the man back in again?"

Q. Do you recall whether or not Brodose took any position about that, or do you know of any position he took?

A. Well, Brodose definitely was against every walkout. He'd even go as far as—well, if you was away from your job too long, he'd squeal on you, although he was a good union man. Or his one thing in mind was production, production and more production. He didn't want no disturbance of production.

Q. In relation to this walkout after which Schuetz and Rosmyslowski were fired, did Taylor tell you anything about his relationship with Brodose or that group as a result of it?

A. Well, none of us liked the position that—that Brodose taken there. I believe there was five or six—Taylor was among us, Joe and Jimmy—and we condemned him not taking leadership, for not showing leadership in the walkout. And we condemned him also for not being—he wasn't even in labor relations—I don't think he come up in labor relations, he left the men go out without doing anything—without trying to stop them. All he did was just condemn them.

Q. He wasn't president of the local at the time, was he?

A. Well, at that time, no.

Q. But was he still a leader?

[fol. 226] A. But he was still more or less a leader of the opposition group.

Q. Have you ever been interviewed by the FBI?

A. Yes.

Q. Were you ever asked any questions about Charles Taylor?

A. No, they have never mentioned Charlie Taylor's name to me.

Q. Did you ever consider that Charles Taylor at any time was a Communist or a follower of the Communists?

A. It wasn't a case of considering, it was a case of knowing. I knew at all times that Charlie Taylor was never a member, or if he was I would have had many arguments. He definitely was not a member, because I have argued, and I have searched them out and argued with each and every one of them, and I have had no words with Charlie Taylor; only I criticized him when he went in supervision. I told Charlie the other day, I said, "The only argument I ever had with you was when you went in supervision."

And definitely at the time, I remember, with the Communist Party we had plenty. Because I went out of my way —on the streets if I seen them running across the street, I crossed over just for the purpose of argument with the guy —well, not argument, debates. There was never no fisticuffs, it was just a verbal debate on their positions, and [fol. 227] the stands that was taken. A very flip-flopping position.

Q. I am referring to Exhibit No. 3, and point out to you that on the front of it there are—well, I suppose, several dozen—names, and it urges, "Watch for these names, vote for these names."

Were most of the people on there Communists, or were only a minority of them Communists, if you know, or if you have any opinion about it?

A. Well, Alvin Taylor there.

Q. What do you say about him?

A. Well, he was in my department, in 51. I had plenty of arguments with him.

Q. What impression did you form about Alvin Taylor?

A. Well, that he—from the position that he's taken, he's either playing a Charley McCarthy act, or he joined. He was strictly arguing their line right down—right word for word.

Q. And then there is Allie Brodose on there, I see.
A. Yes. Well, definite.
Q. Freda Werb?
A. Freda Werb.
Q. Are there any others on there whom—
A. No, there is no others.
Q. Would you say then that the rest of them, as far as you know, you did not identify as Communists?
[fol. 228] A. No, the rest of these people here I know very well, but definitely was not members of the Communist Party, or—well, you can't really call them fellow travelers, either, they—you see what happens, Brodose, has a big mouth. To give you an example I signed him up in the union. He worked in my department. I was on the burr bench, and I went over to sign him up, and he started singing at the top of his voice while I'm trying to tell him about the union—got the membership card in my hand. And the louder—the more I would talk, the louder he would sing.

So I'd walk away.

So later on when I'd walk away, he would quit singing. So maybe a half-hour later I'd mosey back with the membership card, and he'd start singing at the top of his voice again.

Well, that went on and on for about two months before he stopped singing and signed up.

Now, I don't know if he was a member of the Communist Party then or not, but I understand he worked out on—somewhere on—some gardens or farm, or somewhere, and worked on the boats, and he would have been playing a very smart game.

But it's taken me two months to sign him up for the union.

After I signed him up he became very active.
[fol. 229] So we had a president then, Mike Berdych, who—well, he was in and out of supervision, and any time he wasn't a union member—a union official, a supervisor—a supervisor. He come out of supervision, he became active in the union and became an official. He was always an official for the company or an official for the union, but never a worker.

So I got a little against that.

Then we had a merit system there, where you got a dime or a nickel raise if you was an A worker. If you were a B worker—an A worker got a raise every three months, a B worker got a raise every four months, a C worker got a raise every five months. So we got into that—some of the guys was complaining that they should be an A worker, and they haven't got no raise.

So I went to the committeeman, who also was the boss—he was a lead man, rather, but it was like a supervisor. And I asked him about this merit system. I said, "How does it work?"

Well, you see, I was getting a little active on it, and he says, "Well, I tell you what I'll do, I'll give you 10 raises a week, and you give them out to deserving people."

I says, "You give me 10 raises a week, and I can give them out to deserving people?" I says, "Who's in charge of this system?"

[fol. 230] "Oh," he says, "Mr. Peckham."

And I says, "Where is his office at?"

"Across the aisle," he says, "you can't go over there—you're only a steward."

By that time I was going out the door, and he got ahold of Mike Berdych and Danny McVey, and they were all there at the same time, and they are screaming I can't go in there.

Q. Who was this fellow—

A. Alvin Gumtoe—Herman Gumtoe.

So anyway, I got in there, and they showed me how the merit system worked.

Q. Was this a company official, or management?

A. He was a committeeman and company official. And the company had his support.

So they told me I was trying to kill the goose that was laying the golden egg, but I didn't care talking too much more, I said, "I want to know more about this system tonight or tomorrow."

That night I got a call from some girl asking me to come down to Angola Beach, that was having a party.

"Well," I says, "who is this?"

"Well," she said, "this is one of the girls from Mr. Peckham's office."

"Well," I says, "who's going to be at this party?"

"Well," she says, "quite a few of the fellows that you [fol. 231] know."

"Well," I said, "mention some of them."

"Well," she said, "Brodose, Gumtoe, the committeeman, and a couple union officials."

And I said, "all you girls from Peckham's office, and Mr. Peckham?"

And she said, "Yes."

"Well," I said, "I might get down."

But the next morning I wrote a grievance, and explained the whole set-up on the grievance. And we went to work on the merit system then.

I felt that any system that they could give a committeeman or steward 10 raises to give out to the workers, that wasn't any good. So they got rid of it, the system, and Mr. Peckham, too, but—

Q. Is this one of the ways which you formed a caucus under Brodose's leadership?

A. That's right. Brodose, he'd taken the position that he's against it, too. He left this Gumtoe more or less holding the bag and being the only one that was in favor of the merit system. So doing away with the merit system, he walked right up to the top, he became—

Q. Is that how he became leader of this group?

A. That's right.

Q. You left his group, you say, when, sometime during [fol. 232] the period he was president; is that correct?

A. That's right, I left it right after Pearl Harbor. I felt that—well, I wasn't too much in favor of having Russia as an ally at the beginning. And so much against it that I wanted out of the—I went out of the administration that he headed. So I resigned.

Q. Now, did there come a time when you yourself were fired by the company?

A. Yes, I've been fired a couple times.

Q. Well, I'm talking about the first time; when was that?

A. That was in '40—'43, I guess.

Q. In the latter part of 1943?

A. Yes, it was around December.

Q. All right, did Brodose or the people under his leadership take a position about your firing?

A. Yes, they took a position that I should take my case to arbitration.

Q. Tell us what happened, don't tell us why you were fired, because that's immaterial. When you were fired, what happened?

A. Well, I went down in front of the gate and started picketing. I got my sign made and started walking up and down in front of the plant, asking for my job back.

So Brodose and some of the committeemen, labor rela-
[fol. 233] tions, they come down together to the gate, and tell me I was in violation of the contract, I had no right to picket the plant. And I should take my case to arbitration.

I knew if I took it to arbitration that the—I wouldn't get back, I wouldn't get my job back, because Brodose would see to it.

So I continued to picket them.

Brodose, he arranged for a little booing squad once in a while, every time the guys would come out they would boo me, every time I come back in they would boo me again. And he would have quite a few people to approach me and tell me there is a war on, I shouldn't be out here picketing the plant.

Q. Let me just interrupt you a minute: Although Brodose wasn't president of the local union at tha time, did he have any authority or control over the stewards and committeemen?

A. He certainly did.

Q. Was he still looked upon by a number of them as their leader?

A. Oh, yes, he was their leader.

You see, he'd have been their leader even if he wasn't a steward. You see, once he had the group, he was looked on as their leader, and he still controlled a majority of the stewards and committeemen.

[fol. 234] Q. Even though he didn't control the officers of the local?

A. That's right.

Q. Do you know whether Taylor took any position in your effort to get back?

A. I'm proud to say that Taylor came out there and—and helped me on the picket line.

Q. And I suppose you eventually got back to the plant, didn't you?

A. Yes, it was from—from a one-man picket line to—I think we grew to 127 before they decided on the type of arbitration that I would accept.

I wouldn't—I wouldn't let none of them represent me, and I wanted a few of the top leaders at the—of the CIO—to be there, so I would get a fair shake, and I wanted Dave Diamond to be my legal representative.

And they granted that, and I got back—didn't get any back pay, but I got my job back.

Mr. Lipsitz: That's all the questions I have at the present time.

Chairman Waldman: Mr. Leone?

Cross-examination.

By Mr. Leone:

Q. In 1943, the spring of 1943, when the Brodose group was running on that Unite and Win slate program, did [fol. 235] Brodose ask you to join his slate?

A. No, he didn't.

Q. And why not?

A. I was in opposition of his slate.

Q. And that opposition grew prior to that particular time, that time being March 1943; you were opposed to him prior to the day of that exhibit that you have before you; am I right?

A. Well, when I broke from the—as a guide, I was a guide in the local union—when I broke, resigned from the local union, I started to oppose him from then on.

Q. When was that?

A. Beg pardon?

Q. When was that?

A. That was in '42.

Q. Why did you oppose Brodose?

A. Well, because he was a member of the Communist Party. You see—

Q. All right, that is sufficient.

Now, were you in a better position to tell about Brodose than Mr. Taylor was?

A. That's for sure.

Q. Charles Taylor?

A. That's definite.

Q. Why would that be?

A. Well, I was more active—I was more active with—[fol. 236] in the politics, or the inner circles, than Charlie was.

Q. Do you have reason to believe that Mr. Taylor did not know that Brodose was a Communist or Communist sympathizer?

A. Well, I wouldn't say Charlie didn't know, because we attacked—attacked heavy on that line. I mean, we—their position was that we was Red-baiters, and our position was that they was Commies.

And naturally these people that run on his ticket at a later date was still running, not actually supporting Brodose, they was running to get theirselves elected.

You see, he controlled certain sections, if you wanted to be a union representative you had to—you had to accept your support from where it came from.

Now, these candidates on here wouldn't have got elected, only on this particular slate. They could have been defeated if—just being in opposition, but they would never have been elected.

Q. There was an opposing slate, though, wasn't there, to this Unite and Win slate?

A. Well, we opposed the—the Unite and Win slate.

Q. Who is "we"?

A. The group I belonged to at that time.

Q. What group is that?

A. Well, we was progressive. We was Progressives. Then [illegible]pendent progressive, and—see, I left this group, [fol. 237] went in with the independent progressive, and then the Rank and File. And then I left—

Q. And Taylor had the same opportunity that you had to join the Progressive group, didn't he?

A. No.

Q. He didn't?

A. No.

Q. Why not?

A. Well, Taylor's section at that time—see, they vote for you on sections, there, see. 75—75 people for a steward, and 300 for a committeeman.

Now, those is in a group. You can't have people over in the other end of the plant voting for you. So in your section there, they are the only people. And if Brodose controlled your section, if you wanted to be a committeeman, you had to accept his support. And in turn, you'd be classified as being in the group. That was only—the only reason he would be supporting—he wouldn't be supporting his politics, which we was all against, he was only supporting Brodose in reality to get elected committeeman.

Now, in my section Brodose couldn't hurt me, he couldn't hurt me—he had no control over my section whatsoever. No one else did. I had about 375 votes, which more or less got me elected for 11 straight years, and for that reason I changed groups, the whole four groups. I supported the [fol. 238] Brodose group, I supported the Progressives, I supported the independent progressives, I supported the Rank and File—and that was the last group. And I opposed that—the last group. I opposed them all, and supported them all.

Q. It is my understanding that these individuals who ran on this slate were voted upon separately?

A. Will you speak just a little bit louder. I've got a cold in the head.

Q. It is my understanding that the individuals running on any of these slates were voted upon separately, rather than as a unit?

A. That's right, they carried so much weight, but that weight was more or less controlled by Brodose.

Q. It is also my understanding that the Brodose slate lost in that 1943 election?

A. Well, not the entire slate.

Q. All right, that's what I am getting at; who on his slate won, if any?

A. Well, Bert Lotta was elected chairman of the committee; Alvin Taylor was elected top committeeman; Siegler was—no, Siegler wasn't elected there.

About five, about five or six here would be, I believe. Maybe a few others.

See, you got the Falls plant here, you got a group over there that I wasn't too acquainted with at the time. We [fol. 239] only met them at the membership meeting.

Q. I'd like to put my question this way: If you had been asked to run on the Brodose slate, would you have done so?

A. I would have, under any circumstances—other circumstances. Say, for instance—

Q. You would have?

A. I would have, if he had control of my department.

Q. You would have?

A. That's right.

But I could take an independent, because no one could hurt me, I had 375 votes, and I didn't have to belong to, really, no group in order to win. And that's why I belonged to all of the groups, and opposed all of the groups at one time or another. It all depends which way the issues was.

I take responsibility of electing him when he ran against Mike Berdych—I took 50 people from my department, I made five trips with my car, hanging on the running-boards and everything else, over to vote. He only won by fifty votes, so if I hadn't taken the fifty people over, he wouldn't have got elected.

Q. Now, you are convinced from your own conversations with Brodose that he was either a Communist or a Communist sympathizer?

A. No, I was convinced he was a Communist.

Q. You were convinced that he was a Communist?

[fol. 240] A. Yes, from his conversations that's what I—

Q. You were convinced from your own conversations—

A. That's right, with Brodose.

Q. Did you have conversations with any others?

A. Well, more or less.

Q. On the same subject?

A. More or less arguments.

Q. On the same subject?

A. No, just arguments. You see, Brodose—more or less—some of them, some of them, he told me who the members was, and others do their conversations—you see, like if I was setting here with Brodose in a cafeteria, three

or four guys would come up and talk to Brodose, and their conversations was of the—of the political nature, of their party belief. But they never say, "Well, we don't want to talk, there is Bert Rowe."

Q. Well, did you ever have a political discussion with Charles Taylor?

A. No, I absolutely ignored Charlie as far as politics was concerned. I talked to Charlie on grievances, and stuff like that, he wasn't of the—of the political character that I talked to. He wasn't—he wasn't a member of the Communist group, or—that you—that I went after. I went after those that I knew was Communists. I went after those that was passing their line around.

[fol. 241] Q. That's what I am getting at: How do you know that, if you never had any conversations with him?

A. Well, I listened at the conversations that he has, and I have talked to him.

Q. Well, that's what I am getting at.

A. Well, if you are a member of—

Q. If you had talked with him?

A. If you are a member of the Communist Party, and I come up and talk to you, the third word out of your mouth, you have been identified. There is no member in the Communist Party can—can say three words without telling you he is a member of the Communist Party. He doesn't have to tell you in those words, but his positions—

Q. In other words—

Chairman Waldman: You said he mustn't tell you in those words, but his position—finish your sentence.

The Witness: His position on the various issues at hand that you'd be talking about. Say, for instance, there was a blood donor drive—you see, we had a blood bank, and we had various drives in the plant. Well, naturally the Communist Party is against that—although they was for the war effort, they was against the blood donation, they was against people donating blood.

Well, if it was a particular day when I walk in to you, and there was a drive for blood, that's your drive today, [fol. 242] and that's what you are going to talk, against that, regardless of what I talk about. I might start talking

about a theater downtown, but the third word out of your mouth is against the blood drive.

Mr. Lipsitz: May I just interrupt a minute and ask: Was there a particular reason why the Communists were against the blood drive, that you knew?

The Witness: Well, I don't think any of the blood was sent to Russia.

Mr. Lipsitz: Was this something that was talked about as a reason?

The Witness: No.

Mr. Lipsitz: But they did take a position against it?

The Witness: They took a position against the blood drive.

In fact, we brought up one girl—I just can't remember her name now—being against the blood drive, out in the open. She was absolutely against it, so she talked to two or three or four girls at the Falls, and she was disciplined for it. And I remember it was a pretty complicated case—I think I was on the top committee then. And she was right out in the open against it. Now, I can't recall her name. Of course, she's no longer with Bell, but she went with the girls when the girls was laid off.

[fol. 243] I believe their position was that the blood was not important in the war effort—in other words, it wasn't sent to Russia, just these airplanes and stuff like that was going to Russia. The blood most likely they felt was for our soldiers, and they didn't care too much about them.

There was other drives they was against. They was against the savings bond drive, they was against bonds. Their position on bond drives was very strong. I think right out in the open against the bond drives, if you was—they had a—we'd get quotas at the plant, the quota would be announced—I mean, how much they expected us to buy, and everybody was expected to take part in it.

So you run up against one of their members; today the buy-a-bond drive is, and their line today is to condemn the buy-a-bond drive in their way. So the third word out of their mouth, no matter what you talk about, is about the bond drive. So the bond drive and the blood drive they identify theirselves very much.

They identified theirself about production. Tremendous amount of conversation from them, speed-ups and stuff like that. But they never really come out in Bell for a speed-up. It was funny, they just couldn't get away with it there, the people would have rebelled against it; and most of them had brothers, sisters—brothers and sons and husbands in the war effort, and they was working as hard [fol. 244] as they could, and they wouldn't—they didn't want nobody to interfere in their work. It's very unusual; we had in our department—it was a very dangerous department to work in, and many of them—many fingers is lost in that department. So being a union official, if I seen a girl working carelessly, and fast, I used to get a hold of the foreman and ask him to talk to her and I'd say, "The girl's working pretty fast."

You know, you get a little faster in that machine—you are in sequence, it's all right, a little slower on the machine. But a girl is so fast with her hands that she can take a part out of that machine while that machine is coming up, and put another part in while the machine is coming down. We can't do that, a man is not that fast with her hands, but a girl is fast enough to get that part out. So we have got safety devices here; you put your hand on a safety device, the machine is supposed to come down—you are not supposed to get your hand in there. They are so fast they can push those buttons and put their hand in there before that machine gets down in there.

So I seen one girl, she's really beating the timing of the machine. So I told the foreman—a very nervous man, Mr. Graham—I says, "The girl over there is working pretty fast, she is going to out-speed the safety device." He went over and told her to slow it up, slow it up a little bit.

I never see a woman go all to pieces in all my life. [fol. 245] She has somebody in the service. She bawled the living hell out of that foreman, and he didn't know what to say.

And she set back there, and she didn't work that fast, though. She knew what she was doing—there was no one going to speed her up.

Chairman Waldman: I think we have gotten the point of this Mr. Rowe, up to now. Would you wait for the next question, please.

By Mr. Leone:

Q. Whom did you consider to be Mr. Taylor's friends in the plant in this period that we are speaking of?

A. Well—

Q. Whom did he associate with mainly?

A. Charlie had a lot of friends, he was well liked. And the position that he taken was that the type of petition—position that he would have half the people against him, like some of us.

Most of us had half the people against us, half the people saying we are good, the other saying we are bad. Because we was—we was out on the forefront on all the issues, and more active in the arguments.

But Charlie did not get in—in the arguments, because he wasn't being attacked.

Q. I see; but still I'd like to have the names of the individuals that you considered to be his friends or asso- [fol. 246] ciates of that time?

A. Oh, I could name quite a few.

Q. Well, those that you felt were closest to him?

A. Oh, I wouldn't know just who, where to start at. There were so many.

I would say I was a friend of his, although I was in opposition to him. Because I was a friend of anyone who wasn't—you know, too active, any committeeman or steward who wasn't, what you say, a diehard.

Q. Let me put it this way: Were there people that he associated with, that he went out to lunch with, people that he came to work with?

A. I didn't know who he rode with, but when he ate lunch it was usually—about 30, 40 of us at a table at the same time. Charlie was more or less—I mean he was—he wasn't attack so he wasn't—nobody was mad at him. He might eat with 10 different guys every day. It wouldn't be—there was no particular group, he wasn't with us. You know what I mean, we go out to eat together; nat-

urally, we'd be making some sort of—more or less a caucus, meeting at all times, because the issues was being talked about.

Q. Did you see Taylor, for example, having lunch with Allie Brodose?

A No, no, that I never seen. I never seen him having lunc with him, I never seen him having a drink with him. [fol. 247] Q. Freda Werb?

A. I never seen him outside in Allie Brodose's presence.

Q. Freda Werb?

A. No, defintiely not.

Q. Does the name Clara Lester mean anything to you?

A. C-a-r-l Lester?

Q. Clara.

A. Clara Lester?

Q. Clara Lester, doesn't that mean anything to you?

A. No; I think I seen her picture at one time, though.

Q. You saw her picture?

A. I'm not too sure. I think I did at one time. I think I was asked once if I knew her. And I—I don't recall her.

Q. You don't?

A. I might have seen her, but not knowing her name.

Q. Sam Weisman:

A. I've heard that name, too, but I never met him personally.

Q. What do you know about him?

A. Why, I heard that he was a member of the—the group, or a member of the Communist Party.

But just hearsay, that's all. I never knew of him, because he wasn't an employee of Bell. I paid very little attention to the outside political movement, other than [fol. 248] Democrat and Republicans.

Q. Jim O'Connor?

A. Oh, there was names—Jim O'Connors, I think he was a Bell employee. Just where he worked at—I—he wasn't too active.

Q. Do you associate his name with Charles Taylor?

A. No, definitely not.

Q. Anton Sustar?

A. Well, there is—there was a funny Communist. He was a very unusual Communist.

Q. Before you go into that, do you associate his name with Mr. Taylor?

A. Well, definite not, no. I hardly associate his name with Brodose, although it's just to being a Communist.

It's the most unusual thing, he's one of the members of the Communist Party that was never active in the Communist Party. And one thing I always thought was so unusual about him, he was—he enlisted in the service in the First World War, and come out with an honorable discharge. In the Second World War, the second war he enlisted again, not drafted, he enlisted again, and come out with an honorable discharge.

I mean, I could never understand that man being a Communist, and yet he was. And each time he enlisted—in the First World War—he'd mark down on his papers, "I am a member of the Communist Party." And the second [fol. 249] time he enlisted he marked down again, "I'm a member of the Communist Party." At no time did he deny it.

Under the rules the company had to let him go because he was a member of the Communist Party. But as far as the company, being active, a steward, or even taking an active position, even taking a Communist position, he never did. He was just a Communist, period—just a member. He could have been a Republican, and nobody would have known the difference, from a position or from his conversations.

So I can't connect him with Brodose, even though he is an admitted Communist.

Mr. Leone: That is all.

By Commander Dunstan:

Q. When did Brodose first go to work at Bell?

A. 1940.

Q. 1940?

A. Yes.

Q. What was his attitude in 1940, the same thing as all the way through?

A. Well, in '40, as I said, it was taking the two months to sign him up. And I don't know if that was a game he was playing or not.

But I usually went to the tough ones to sign up. In fact, another guy wouldn't sign up, I befriended him, and I overhauled his car free, just to get him to sign a mem- [fol. 250] bership card. And still he wouldn't sign it, after I worked on his car.

But Brodose acted like a tough guy to sign up, and those was the people I wanted to talk to. I didn't think I accomplished an awful lot if I come up to a man and he signed a card without any conversation. I'd much rather if you'd be a little hard to sign up, and I got a chance to talk unionism to him.

And Brodose was a tough man, it took almost two months to sign up. It takes almost two months to get him to stop singing.

Q. What kind of songs was he singing?

A. I don't know, he was singing too loud for me to tell. He was singing the top of his voice.

Q. In English, German, Spanish—

A. No, English.

Q. He was singing, but you don't know what the names and the songs were?

A. I don't know what the names were. All I heard was burring—I wasn't listening. I don't know whether he was carrying a tune or not.

Q. This fellow Schuetz who had some grievance that he couldn't get settled—

A. Jimmy is a—

Mr. Lipstiz: Wait a minute, Bert, let him finish his [fol. 251] question first.

Q. You said something about some woman, who was friendly with other men around there, but not with him; and therefore she would not settle his grievances; who was that woman?

A. I just said her name a few minutes ago. The only woman in labor relations we ever had, sir. Well, nuts.

Her name will come to me in a few minutes, but she wasn't—wasn't too bad a looking girl, well dressed, always

had a red pocketbook, open it up, a man's pocketbook—you know, folder, and you'd always see the money there; and she's marvelous made up, and if she likes you—well, she liked me, I could settle most any grievance—grievances that other committeemen didn't even get to first base, I could settle them.

But she had no use for Jimmy. Jimmy was a nice looking guy, but he was a little bit arrogant.

Q. Do you remember what she looked like?

A. Oh, yes, yes. She was about, oh, I'd say maybe 32 years old, weighed maybe 119, 120 pounds, and all dressed up in a suit, no dress, wore her clothes nice.

And we made the gift. When Jimmy was going in the Navy he wanted her job. Well, we give her—we went to work on her. We all went, in fact, to the manager's office, and we stayed there, about 70 of us, until they dismissed her.

That was a going-away present, because we knew she caused so much trouble with her likes and dislikes that [fol. 252] it was no job for her. So we wouldn't move out of that room until they fired her. And they fired her.

Q. You said that you had seen a picture of Clara Lester?

A. Yes, I have.

Q. Was there ever any resemblance between the two, this girl and Clara Lester?

A. No, Clara Lester, if I'm correct, weighed about, oh, I'd say about 145 pounds, and this girl was more or less on the thin side.

Q. Clara Lester was an employee of Bell also?

A. No, she's not at Bell.

Q. Was she at that time?

A. To my knowledge, no.

Unless she worked the assembly line, or something like that. We had so many—so many of them.

Q. You just don't know whether she worked there or not?

A. No, she might have worked there, because if I'm not mistaken, the FBI called me over to security for just that purpose, to look at her picture and see if I knew her. And I said no, and that's all they wanted at that particular time.

Commander Dunstan: That is all.
Chairman Waldman: Mr. Simms?
[fol. 253] Mr. Simms: No questions.

By Chairman Waldman:

Q. You testified that there was a time when certain individuals in the plant would bring in Communist literature of some type; am I right, sir?

A. Yes, they did bring some literature in the plant.

Q. Can you identify the year or years when this—

A. Well,

Q. —took place?

A. —I'd say in '43 they got quite a bit in.

Q. Who is "they"?

A. Brodose brought it in, and Freda Werb—she always had some sort of a little—little literature in her pocketbook that she would give to you.

She always gave you something to read.

And Brodose, too, he'd always give you something to read, and something to take home and read. And they always had a line, "Don't throw it away, I want it back."

Well, the object was—in that was that when you got it back to them, they wanted to know what you read. In that way they would—they had accomplished, you know, I mean, something, in that you read something.

If you said, "Well, I read three pages," well, they wanted to discuss those three pages with you, what you thought, what you read.

[fol. 254] And that's why they always wanted, whatever they'd give you back—if it wasn't a newspaper—if it was a pamphlet or something, they wanted it back, because they'd tell you it was the only one they got, and it was for the purpose of you bringing it back so they could talk to you, and what you read. It was quite cute.

Q. Can you recall whether Charles Taylor, as an individual, brought such literature into the plant?

A. No. If I caught him with a piece of literature, I would have had an argument with him on it.

Q. You would have had an argument?

A. I definitely would have.

Q. Have you ever had an argument with him on that?

A. No.

The only opposition—the only thing I ever said I was against to Charlie Taylor was when he went in supervision—not that we was against promotions—we wasn't, and we recognized the importance of supervision—but naturally we hated to see stewards and committeemen go in, we wanted the workers to go up there, and we wanted our stewards and committeemen to stay active in their union.

It takes quite a bit of time, you know, to educate ourselves to be union representatives, and naturally the company wanted to put us on supervision.

Q. Mr. Rowe, was there ever a time in the years 1942, [fol. 255] 1943, or thereabouts that you can remember that certain individuals brought nominating petitions into the plant for signature by the employees, which were petitions for political activities outside of union activities?

A. Yes, they was petitions drawn up to get certain members of political parties on the ballots, outside elections. You had to get so many signatures to get them on the ballots.

Q. Can you remember during what year or years these petitions may have been circulated at the Bell plant?

A. Well, yes, '42, '43 they were circulated there. They tried to get—I think there was two or three groups circulating them.

Q. Will you tell the Board, if you remember who the individuals were, who the groups were who were circulating these petitions?

A. Well, those were circulating a petition to—to get—I can't remember the name of the guy—I think he was a school teacher in Buffalo, was running for supervisor or committeeman—supervisor, I think, or something.

Q. On what party; do you remember?

A. On the Communist Party.

Q. Did Brodose circulate that among the employees in your plant?

A. Yes, that it filled up very well. Everybody signed it. I mean, after all, a union official come around, and they [fol. 256] signed anything.

Q. Were you one of the individuals who signed the petition?

A. No, I'm a Democrat.

Q. You said—I think you just said that a union official came around, and then you said, "Well, I didn't sign it, I was a Democrat." You mean everybody else there was not a Democrat?

A. Well, most of the people don't ask you Democrats, Republican, or what the petition is. They figure that it's a petition for something—they may even think it's a petition to get them a raise.

Q. Why didn't you sign this particular petition for the school teacher?

A. Because I—I read everything I sign.

Q. You read that it was a Communist Party nominating petition; is that right?

A. Well, I knew—I knew that the petition was to get the candidate on the ballot outside.

Q. No, when you read the petition—you say you read it; do you remember that it said, "Communist Party nominating petition"?

A. Oh, yes, yes.

Q. That is why you didn't sign it?

A. That's right.

[fol. 257] Q. But you say many others may have signed it, who didn't read it, or who were Communists, or what?

A. Well, Russia being our ally at that time, it wasn't too—it wasn't too bad. It was just like I come up to you, and you are more or less a—the rank and file working on the bench, and so we are trying to get this person running on the ballot. And they'd have a line: "A Democratic country, why shouldn't we have other people running besides the Democrats and Republicans?"

It's legal, and people accept that. They may sign their name there, and turn right around and voted Republican. Voted right against the person, without the person even knowing it when they went in the booth. Vote and signed the petition against the person whose name should be on the ballot.

Q. Mr. Rowe, aside from the petition which Brodose circulated for the school teacher on the Communist Party, can you think of any other petitions that may have been circulated by the Brodose group for outside—

A. Not by the Brodose group.

Q. —political activities?

A. Outside there was the Trotsky groups, they supported petitions, too, for the same person.

Q. That is the Socialist Workers Party?

A. That's Socialist Workers Party, a branch of the Com-
[fol. 258] munist Party.

Q. Did they circulate those petitions in your department?

A. Yes, the plant and the department.

Q. Did you sign any of those petitions?

A. No, I didn't.

Q. Did other people in your presence sign those petitions?

A. No, I never seen them sign them. I seen them after it was filled up, though. I've seen petitions—well, we'll say eight or nine sheets filled up.

One time, I think it's '43, the petitions was void, that they signed. They signed on both sides of them, and the election authorities, they ruled them out, because they were signed on both sides. They was only supposed to be signed on one side, or something like that.

Q. Mr. Rowe, do you know of your own knowledge whether or not Charles Taylor signed any Communist nominating petitions?

A. Well, I would say that Charlie Taylor did not sign anything on Communists, because I knew he was against them.

And I know he was against them to the extent that I'm here in his behalf, because if I even thought for a second that he was a Communist, I'd be in the plant telling the people, "I hope he doesn't get back."

Q. I didn't ask you that.

[fol. 259] A. Well—

Q. I asked you if you know of your own knowledge that he had signed any, and you said that he didn't?

A. That's right.

Q. Of your own knowledge—right?

A. That's right.

Chairman Waldman: Mr. Leone, do you have anything further?

Mr. Leone: No.

Chairman Waldman: You may be excused.

The Witness: Thank you.

And I'd like to state again that I wouldn't be here if I had even the slightest thought that this brother was a member of the Communist Party.

Chairman Waldman: Your remarks are on the record.

(Witness excused.)

Chairman Waldman: We will take a five-minute recess.

(Recess had.)

Chairman Waldman: Who is the next witness, Mr. Lipsitz?

Mr. Lipsitz: Meyers, M-e-y-e-r-s, Leon—last name first.

Chairman Waldman: Mr. Meyers, before you testify it is my duty to inform you that Section 1001 of Title, United [fol. 260] States Code, makes it a criminal offense, punishable by a maximum of five years' imprisonment, $10,000 fine, or both, to make a false statement or representation to any department or agency of the United States as to any matter within the jurisdiction of any such department or agency Do you understand that, sir?

Mr. Meyers: Yes.

Whereupon, LEON MEYERS, called as a witness on behalf of the Respondent, was examined and testified as follows:

Chairman Waldman: Would you kindly give your full name and residence address to the reporter.

The Witness: Leon Meyers, 109 Russell, Buffalo, New York.

Chairman Waldman: Proceed, please, Mr. Lipsitz.

Direct examination.

By Mr. Lipsitz:

Q. You are an employee at Bell Aircraft?

A. That's right.

Q. How long have you been employed there?

A. Well, on and off since 1940.

Q. How do you mean on and off; do you mean you have been away from the plant?

A. I've been laid off in '45, and got recalled in '46; was [fol. 261] laid off in '48, recalled in '48; but was laid off in '48 and recalled in '49.

Q. All right, but you have been a seniority employee ever since 1940; is that right?

A. That's right.

Q. Have you had your name legally changed from another name?

A. Yes, I had it legally changed in 1950. The name before was Leon Sam Marzynski.

Q. Spell that, please.

A. M-a-r-z-y-n-s-k-i.

Q. Did you change it for personal reasons?

A. Well, not exactly personal. I changed it because—

Q. Well, let me ask you: You didn't change it to change your identity in any way, did you?

A. No; I changed it—it was more for the benefit of the children, and my brothers and sisters. In fact, I was the last one to change the name, and meeting each other, brothers, one is Meyers and one is Marzynski—to set off that complication, I changed it.

Q. You have testified once before in one of these proceedings, haven't you?

A. Yes.

Q. For whom was it that you testified?

A. Sam Lesh.

[fol. 262] Q. Do you know Charles Taylor?

A. Yes, I know Charles Taylor.

Q. Do you recall from what time you have known him, and that is, the earliest time that you remember?

A. Well, I'd say the earliest I met Charlie was somewhere in 1940, or '41.

Q. Did you meet him in connection with his working and your working at Bell?

A. Yes.

Q. You didn't know him before he came to work there?

A. No.

Q. In 1941, 1942, and 1943, where were you working, what facility?

A. I was working 51 department. That was the punch press, on the third shift.

Q. What plant?

A. Wheatfield—Elmwood Avenue.

Q. That was the main plant of the company at the time, wasn't it?

A. That's the only plant they had there for a while.

Q. Were you during those years an office holder in the local union?

A. Yes, I was the chief steward and sergeant-at-arms on the executive board.

Q. When were you sergeant-at-arms on the executive board?

[fol. 263] A. I think '41 to '42—'42 to '43, that's right.

Q. You were elected in the election preceding the election which is the subject of Exhibits 1, 2, and 3, which you are now looking at; is that right?

A. That's right, from '42 to '43.

Q. Were you a member of the Unite and Win caucus when you were elected?

A. Yes.

Q. Was that the caucus headed by Allie Brodose?

A. That's right.

Q. Did you know Allie Brodose at that time?

A. Yes, Allie Brodose worked on the third shift. That's when I met Allie Brodose.

Q. You didn't work with Charles Taylor, did you—that is, in the same department or location?

A. No; I believe Charlie Taylor worked day shift in the tool room, and I worked the third shift.

Q. How did you get to know him, where did you have the opportunity to know him to the extent that you did?

A. Well, mostly through the membership meetings, and once in a while I believe he was a committeeman, and I approached him once in a while on a grievance that I had on the third shift.

Q. Just to avoid the confusion, you said you were chief steward; is that of a department?

A. Of the department.

[fol. 264] Q. So there were more than one chief steward in the plant at the same time?

A. Oh, yes; in fact there was more than one on the department.

Q. On the different shifts?

A. No, on the same shift.

In other words, we had—oh, in the neighborhood of 300, about 300 employees on the third shift, and we were entitled to, I believe, to I think two or three chief stewards.

Q. Did you tell us the office you held in 1942 to 1943?

A. Yes, I was chief steward, and I was sergeant-of-arms and member of the executive board.

Q. Were you associated with the Brodose caucus before you became elected to the office of sergeant-at-arms?

A. Well, he approached me to run, but prior to the time that I ran there was no caucus. It was, I think, in 1942 where Brodose asked me to run.

In the meantime I believe he was working either on days or he was on the other—one or the other. And he approached me, and approached a few other guys, that we would form a slate to run.

Q. This was preceding the 1942 elections; in other words,—

A. Yes, well—

Q. In preparation for them?

[fol. 265] A. That's right. Right.

I met him at the membership meeting, and we got together, and he was talking, and he asked me, because I worked on the third shift.

Q. Did you ever oppose Brodose on any issues while you were in that caucus?

A. Well, no, to tell you the straight truth, I doubt if I attended more than two or three caucuses. I attended a caucus at the time that they had nomination for office.

Q. Whether it was at a caucus meeting or on the local union meeting floor, did you ever oppose Brodose on any position?

A. I—as far as I can remember, I opposed Brodose when they tried to put in a steward system or committee system similar to General Motors. And that was—I just forget what year it was, but see, we had more representation on the floor than General Motors had. And they were trying to put in the same sort of a system that General Motors had, that

was do away with the chief steward, just have committee.

Q. Who was the "they" that was trying to do this?

A. Well, that was Brodose and the rest. I'm not certain just who they were. A couple of guys from the international, as far as that goes—international representatives.

Q. Were you ever present at any time when Taylor and Brodose took opposing points of view of any issue?

[fol. 266] A. Well, I—the only one that I can recall I believe was a meeting in 1941 at Memorial Auditorium.

Q. Was that the day that Pearl Harbor was bombed?

A. Yes.

Q. What was the issue that was raised there, and on which they were in opposition?

A. Well, there was a strike vote that was supposed to take place.

Q. Was that strike vote in connection with a contract negotiation?

A. With the contract.

Our contract expired, and they were deadlocked in negotiations; and according to the contract that expired, we'd have no contract, so that gave the membership a choice, to either strike or accept what management offered.

Q. Was it standard procedure to then present the issue of whether to strike or not to the membership?

A. That's right.

Q. Was this presented at this meeting?

A. Yes, it was.

Q. Did Taylor and Brodose take an opposing point of view?

A. Well, I recall, as sergeant-of-arms, I was by the door; I used to check the members, keep the meeting in order. And I recall Charlie Taylor sitting on the right-hand side, and there was quite a few fellows in that one session that [fol. 267] opposed Brodose at the time, when he mentioned something about Pearl Harbor, and either to accept what the company offered, or—anyway, he was opposed to a strike at the time, Brodose was.

And there was people on the floor that felt that they still held their rights, they have a union, they had—under the Wagner Act they had a right to negotiate, and go into the contracts. They couldn't settle this in a normal way, they had a right to strike.

Q. What position did Taylor take?

A. Well, I believe at that time Taylor took the position that he was in favor with the members at the time—that the members, like a straw vote, or whatever you want to call it, the sentiment was there for the strike to continue, to go on with the original plan to strike.

And I couldn't say for sure, but Taylor was right in that same crowd of that one section there where they were opposing the president at the time.

Q. They were opposing Brodose; is that right?

A. Brodose.

Q. Were you ever present on any occasion where Taylor and Brodose had an argument which became rather violent?

A. Well, the only time, I recall of one instance in particular; that was, I just got through leaving the restaurant or drug store on Delaware and Chippewa.

Q. When do you place this?

[fol. 268] A. Oh, this was either late '42 or early '43.

Q. All right?

A. That's when Brodose was president, and—oh, it was roughly after 12 o'clock, something around there.

Q. During the day?

A. That's right. We are having our—it was on a Sunday—we were having our meeting—

Q. This was before the meeting?

A. That's right.

Q. This was at a drug store near the building—

A. Where we had the meetings.

Q. —where you had the meetings?

A. That's right.

I think we had that meeting at the Root Building—I'm not certain.

Q. All right, what happened on that occasion?

A. I didn't get much chance to talk to Brodose; he just happened to be talking to me, asking me about coming to the meeting, and just kidding around, more or less.

Q. Were you outside on the sidewalk?

A. Outside, yes.

And Charlie Taylor was coming from—I'd say from—well, the west, he would be coming from the west side, up Chippewa Street.

Q. All right, so that they can get the proper location, [fol. 269] he was coming from a direction that was from Elmwood Avenue; is that correct?

A. From Elmwood Avenue.

Q. And Elmwood Avenue is to the west of the corner where you were standing; is that correct?

A. That's right.

Q. All right.

A. And he says, "ah, here comes Charlie."

Q. "He," meaning—

A. Brodose, referring to Charlie.

He says, "I'll see you later." He says, made some remark about "no good bastard," or something of that order.

So he walked away, and he said, "Don't forget, attend the meeting."

And I am supposed to keep the meeting in order, you know, sergeant-at-arms. So I was there, and Charlie come over and said, "Who are you, talking to that—"—something, "big goon," or something— "—Brodose." He said, "you know he's a Commie."

And I said, "Well, I don't know, I heard remarks made."

I questioned Brodose myself one day, and he said, "Well, if you see any horns in my head, or something that makes me any different—" —or some darned thing. "Well," I [fol. 270] said, "I just want to know, Brodosie."

So we just dropped it, and after that we never had—well, when I used to attend the executive board, he used to ask me to vote on some issue, you know, he'd say, "Well, let's vote for this."

Well, the majority of the time I attended the board meetings, I worked the third shift, and we used to have the board meetings around 7:30, by the time they'd get to order it would probably be around eight o'clock. So I'd generally excuse myself, I'd present myself to be present, and I'd stay a couple of minutes, just to have the roll call. And then I'd excuse myself and go home, so I could go to bed to go to work. Because if I didn't present myself and get a regular, legitimate excuse, why, according to the constitution they could remove me from the executive board.

Q. You nevertheless were running on the Unite and Win slate in March, 1943 elections; is that right?

A. That's right.

Q. Did your association with that slate indicate approval of Brodose's politics, or what Brodose's politics were claimed to be, his outside-the-union politics?

A. No, because I'll tell you: this was the first time I was in the union, and I started, like I says, the late part of 1940. In fact, I think I started about three or four days, maybe a week, before Brodose did. And we both got hired [fol. 271] in the same department, we both were working on the burr bench, or burring at that time, and the election was going on for Roosevelt. And I think it was in 1940 when the election was going on. He was talking mostly about the election for Roosevelt. And that was through conversation, talking about the election, that I got acquainted.

Q. But my question is, did the fact that you continued to be on that caucus, did it or did it not indicate approval of Brodose's politics or leanings or point of view?

A. Well, if—I never followed no politics, so I mean, I just was on the slate, just like probably dozens of other fellows.

There never was a caucus, see--this was something new to me, myself.

Q. You mean before this?

A. Yes, never a caucus.

Q. Is it your testimony, then, that most of the people on that slate were not Communists or Communist followers?

A. Oh, I wouldn't accuse anyone, really. I mean, the only one that I knew of that was accused—and he never openly denied it, nor did he ever openly admit it—but he was accused by several people; I accused him myself—we had a disagreement on the executive board; I just forget the—what it was all about at the time, but I opposed him on the executive board, and I told him one day myself, I [fol. 272] said, "You must be a Commie."

Q. Was it—

A. But it was nothing like following his platform, or anything like that there.

Q. Did you leave the slate after 1943, or the Unite and Win?

A. Well, if I'm not mistaken, after that election there I think I ran on—1944 I think I ran on the independent progressive, or progressive. I just forget which, and what year. '44, '45 I ran, I know.

Q. Did Brodose ever talk to you along the lines of getting you interested in the Communist Party or its meetings, or attending any of its functions or anything like that?

A. Well, he mentioned a few times if I would come down on Sunday to—or, some place on Chippewa Street. And then one day walking down Chippewa I noticed there was a big lettering, "Communist Party."

But I never went down there. I didn't go.

Q. Was it your recollection that he was asking you to go up to that place with him?

A. That's the place he asked me once to go. Not once, a couple of times. He told me we had our meeting on a Sunday, and he said if I could get downtown at 10 o'clock, or nine o'clock, or something.

I said, "Well, look, I'm going to church in the first place. [fol. 273] In the second place, I'm not interested in that.

Q. Was this place across the street from the Root Building?

A. Well, probably on an angle. Some place right around there, right across the street.

Q. Did Charlie Taylor ever talk to you about getting interested in the Communist Party, or going to its headquarters, or anything like that?

A. No, never.

Q. Have you ever had conversations with Charles Taylor?

A. No, not really anything that I can recall, because, like I says, Charlie worked the day shift, I worked the third.

But I have contacted Charlie—oh, I don't say real often, but a few times, when I had a grievance that was on the third shift, and I needed some advice, and I used to stay over the third shift, onto days, sometimes till 10 o'clock, and go down labor relations; and a few times I ran across Charlie and I asked him for information on my grievance, or what should a grievance should be written, or how it should be written, or—and if I had a grievance, or not.

Q. Did Charles Taylor have any reputation in the local union of being a Communist or a Communist follower?

A. Not to my knowledge. I never heard anyone accuse Charlie of being a Communist at any time.

Q. Did you have any distinct impression about his feel-
[fol. 274] ings toward the union; was he a strong union man, or neutral, or indifferent; how was he?

A. Well, he was a very, very strong union man, as far as that goes. I mean from the amount of meetings I attended.

And if there was any issues, one thing I—the issues itself I don't recall, but I do recall that he opposed the position of not only the president, but I think at times some of the committeemen, what they consider at that time top committeeman—they ran a little different than today, they had a little different set-up.

Q. Did he have a reputation of being a fairly independent sort of a person in regard to his opinions about trade union matters?

A. Well, I believe in trade union Charlie always, as far as I can recall, what was right was right.

Q. Regardless of who it was for, or who it was against?

A. That's right, he always took a strong union position. He always mentioned the fact that prior to the union you had the sweatshops, but now because you had the right to organize, you are recognized, and in order to be recognized you have to fight to keep what you have, and they provided laws to protect the workers.

Mr. Lipsitz: That is all the questions I have of this witness.

[fol. 275] Chairman Waldman: Mr. Leone?

Cross examination.

By Mr. Leone:

Q. Whom did you consider to be the close friends of Charles Taylor at that time—I am speaking of 1943?

A. Well, like I say, I come to Charlie for advice a few times when I worked the third shift. I had—well, I always considered him a friend of mine.

Q. Did you consider him to be a friend of yours?
A. That's right.
Q. And who else?
A. What do you mean who else?

Mr. Lipsitz: Who else did you consider to be a friend of Charles Taylor?

The Witness: Who else would be a friend of Charlie's Taylor? Why I guess everybody.

By Mr. Leone:

Q. Didn't he have any close friends among people that he associated with normally, people he'd go to lunch with, or go to work with, or eat with?

A. I couldn't answer that question, because I worked on the third shift, and I don't know what people were doing on days, outside of when he helped me, or when I see him at the membership meeting.

Q. Did you—

[fol. 276] A. He worked the first, I worked the third.

Q. Did you know him socially?
A. No, sir.
Q. Have you ever been to his house?
A. No, sir.
Q. Has he ever been to your house?
A. No, sir.
Q. You have never met his family?

A. Well, I met his two sons. This is, I think, about 1953. They are both in the roofing business.

I got to retract that statement, Charlie was at my house, that's right. That was in 1953, I think, with his sons, when I was going to have a new roof put on.

Right away I had the new roof put on, but he didn't get the business.

Q. In 1943, did you run on the progressive ticket?

A. Not 1943, no, no. I think it was sometime—I don't know, either '44 or '45. I wouldn't be quite sure just what year.

I know they—it was on some ticket there with Jimmy Schuetz was on.

Q. Well, in '43 did you associate yourself with any caucus?

A. '43. The last time I associated myself with a caucus was when the Unite and Win ran. That was in '43.

[fol. 277] Q. Were you on the Unite and Win caucus?

A. That's right.

And when I got defeated, that was it.

Q. Do you consider that you were defeated because of your association with Allie Brodose?

A. Well, I assume it was. I mean, he wound up to get a pretty bad reputation, and I think the whole slate lost.

Q. Well, we have had testimony that all of the individuals on the slate did not lose?

A. Well, I—I don't recall exactly who won and who didn't win. But I assumed that they all lost.

Q. Did you ever observe any individuals going into the Communist Party headquarters?

A. No, I never made it a practice to be around there. I just—like I says, I happen to know where Allie Brodose told me where to go, and I happened to see the sign there, and that was it. I never paid no attention to politics. I was just a new guy in the plant.

Q. Did you ever have any political discussions with Mr. Charles Taylor?

A. No, not to my knowledge.

Q. Do you happen to know whether or not he was a member of the Communist Party?

A. No, sir.

Q. Did you ever hear the name Clara Lester?

[fol. 278] A. No, sir.

Q. Sam Weisman?

A. No, sir.

Q. George Lohr?

A. No, sir.

Q. Jim O'Connor?

A. No, sir.

Q. While you were campaigning for your office during this spring election did you and others who were on the slate get together and figure our a plan, so-called, an attack, that you would use to assist yourselves in getting elected?

A. No. I was just a member of the caucus, as I pointed out before. I attended the caucus. The only caucus I can

recall, or the amount of times I attended, was the time when they had the day of nomination in the caucus.

Mr. Leone: I have no further questions.

Chairman Waldman: Commander Dunstan?

Commander Dunstan: No questions.

Chairman Waldman: Mr. Simms?

Mr. Simms: No questions.

Chairman Waldman: I have no questions.

Mr. Lipsitz, do you have anything further from this witness?

Mr. Lipsitz: Yes.

Redirect examination.

[fol. 279] By Mr. Lipsitz:

Q. Just by way of explanation, did the persons who were selected to run on the Unite and Win slate become the nominees as a result of a vote taken at a meeting of the members of that caucus?

A. Well, not a vote, but by the show of hands—a vote, yes, but I mean nothing secret, this—they have the individual leave the room, and take a vote—well, like maybe there is two guys or three fellows who would be running for the same position, so they put the names down, and then whoever stands up for the first one, then the second one, then the third one—that was it. Whoever got the majority were the ones that were selected to run on the slate.

Q. So that the selections were not made by the members of the local union at large, but merely by those that would become members of the particular caucus?

A. That's right.

Mr. Lipsitz: That is all.

Chairman Waldman: Mr. Meyers, you may be excused.

(Witness excused.)

Chairman Waldman: What is this witness' name, Mr. Lipsitz?

Mr. Lipsitz: M-e-a-r is the last name, Harold is the first name.

Chairman Waldma: Mr. Mear—

[fol. 280] Mr. Mear: Mear, just like in beer.

Chairman Waldman: Fine. Before you testify please be informed that Section 1001 of Title 18 of the United States Code makes it a criminal offense punishable by a maximum of five years' imprisonment, $10,000 fine, or both, to make a false statement or representation to any department or agency f the United States to any matter within the jurisdiction of any such department or agency. Do you understand that statement?

Mr. Mear: Yes.

Whereupon, HAROLD MEAR, called as a witness on behalf of the Respondent, was examined and testified as follows:

Chairman Waldman: Would you give your name and residence address to the reporter.

The Witness: Harold Mear, Ewing Road, E-w-i-n-g, Newfane, New York.

Chairman Waldman: Mr. Lipsitz.

Direct examination.

By Mr. Lipsitz:

Q. You are an employee of Bell Aircraft, Mr. Mear?
A. Yes, I am.
Q. How long have you been employed there?
A. Just over 20 years.
Q. Just over 20 years?

[fol. 281] A. Yes.

Q. You were employed as early 1936?
A. August 26, 1936.
Q. In 1941, 1942 and 1943, where did you work?
A. In the tool room, department 40.
Q. What plant was that, where was it located?
A. That was on Elmwood Avenue.
Q. Do you know Charles Taylor?
A. Yes.
Q. How long have you known him?
A. Quite well, since about—

Q. No, you tell me how long you have known him, and we will develop how well?

A. Oh, well, around '41 I met him.

Q. Did he come to work in the tool department, the tool room at that time?

A. No, he—he was on the second shift, and he came on days around the middle of 1942, I think.

Q. Were you working days at the time?

A. Yes.

Q. That is when you first got to know him well; is that correct?

A. Yes, yes, yes.

Q. Were you at any period during that time an officer or steward in the union?

[fol. 282] A. Yes.

Q. What were you?

A. Chief steward.

Q. Of what department?

A. Department 40.

Q. When were you chief steward of department 40?

A. Well, it was after Charles Taylor came on days, and he started talking up the unionism, and he put—put some life into the tool room. And we—which I and Charles Taylor and a few more, we all got together and called a meeting of department 40 employees, and at that time I was elected chief steward.

Q. And this you place in 1942?

A. Yes, around the middle of 1942, something like that.

Q. You said you called a meeting, that is, the meeting was called, and you were elected chief steward?

A. Yes.

Q. Was this on the day shift?

A. Yes.

Q. Was Charles Taylor at that meeting?

A. Yes. He was what you might call the chief instigator of the meeting.

Q. Were there a number of what the workers thought were problems in relation to their jobs that caused them to decide—

[fol. 283] A. Yes, there was a lot of problems, and—

Q. Without going into detail, what were the kinds of problems?

A. Working conditions and wages were the chief problems.

Q. Was there a problem over inequities?

A. Yes, wages.

Q. What does inequity mean in relation to wages?

A. Well, it means an un—unfair apportionment of the wages between one man and another man.

Q. In other words, two men doing the same work at the time, at different rates of pay?

A. Doing the same work, work, yes.

Q. Did you get to know Taylor then at that time, other than in relation to your work and your activities in the union?

A. No, I didn't mix with him too much socially, I—I have been to his house. We had little union meetings at his house, you know, a group of the department 40 employees who were most interested in bettering their conditions. We would meet at his house.

Q. Did you meet at his house once or more than once?

A. I think it was about once or maybe twice. That's about all that I can remember.

Q. Do you recall anybody else in attendance there?

A. (No response.)

Q. Can you recall their names at this time?

[fol. 284] A. There was Tom Smith, T-o-m—he was there.

Q. Who was Tom Smith?

A. He was a department 40 employee.

Q. Is he still employed?

A. Yes, he is.

Q. When you are talking about the time you were at his house and Tom Smith was there, when would you place that, back in what year or years?

A. Oh, maybe towards the end of '42.

Q. Everybody knows you can't be certain about the—

A. Yes, yes.

Q. That is general?

A. Yes, it was somewhere about the end of 1942.

Q. Was Tom Smith a friend of Charles Taylor?

A. Yes. Oh, yes, yes. He was quite friendly. But I say I never mixed with him too socially.

Q. I am asking you about Tom Smith; was he a friend of Charles Taylor?

A. Yes, yes; yes, he was quite friendly with him.

Q. Do you recall the name of anybody else who may have been present at this time you were at his house?

A. Not offhand, I wouldn't say; but there was—might have been half a dozen, or maybe eight—somewhere around there.

Q. But you do recall Tom Smith; is that right?

A. Yes.

[fol. 285] Q. Have you been working in the same department since 1942, with Charles Taylor, and on the same shift?

A. Yes.

Well, not all the time on the same shift. He—he isn't on the—

Q. Well, forget that. I will take it up later.

Up to the time he left and went to Burlington, Vermont—

A. Oh, yes, yes.

Q. Do you recall when he returned from Burlington, Vermont?

A. That was, I think, 1946.

Q. Did he come back to work in the same department?

A. Yes.

Q. Were you on the same shift then with him?

A. Yes.

Q. How long did that continue, that you were on the same shift?

A. I—I think it was up until about—oh, I think it was four—four months ago, I think. I think it was.

Q. But in between was there any period of time when he was not in the same department, on the same shift?

A. But in between, from—let's see, I—I think it was towards the end of '46 that he was bumped, and he bumped into department 45. And I think it was about—I think he [fol. 286] was around 45 for approximately 18 months, between that time.

I went to England and back, and after I came back the—there was a lot more drawn out of department 40, and they had been transferred—they had been transferred to various other departments. And the—

Q. With the exception of these periods, though, you were working with him in the same shift and in the same department since 1942; is that right?

A. Yes, yes.

Q. Did you have daily contact with him during that time?

A. Oh, yes, yes.

Q. Would you say that it is fair to state that you talked with him at least every day during that period that the two of you worked together?

A. Well, some days I'd talk to him a dozen times, and maybe some—a few days maybe I would not talk to him at all.

But I talked to him quite often.

Q. Did he ever talk to you about the Communist Party?

A. No.

Q. About Communism?

A. We might have had some conversation in the later years, when—

Q. Excuse me, I am talking now particularly of 1942, 1943?

A. Oh, no; no, I never had any discussions with him on [fol. 287] Communism in those days.

Q. You say you may have had discussion in later years?

A. Yes, might have had in later years.

Q. Do you recall any conversation in later years about Communism?

A. No, I don't, because we—I don't recall any specific cases, but we always had a—a lot of discussions. We did discuss a lot of various issues.

Q. Did he ever in your whole relationship with him talk favorably about Communism?

A. Oh, no.

Q. Did he ever try to interest you in Communism or its aims or goals?

A. No, absolutely not. No.

Q. What was Charles Taylor's primary interest when he was talking with you?

A. His primary interest was unionism, what he could do for the union, to better the working conditions of the men in the plant.

Q. Did he spend a great deal of time in the pursuit of such objectives?

A. Oh, yes.

Q. Do you recall during the years 1941, 1942 and 1943 any effort to impose a piece work or incentive system on any of the workers at Bell?

[fol. 288] A. You mean did Charles Taylor talk to me, too—

Q. No, do you recall any drive or effort being made by anybody in that direction?

A. Oh, yes.

Q. Who was in favor of that sort of thing, if you know?

A. Well, the—the administration of the union. I mean, the top union officials at that time.

Q. Can you recall the names of any?

A. Well, one I recall most was Allie Brodose. He was the most one in favor of that.

Q. What position, if you know, did Charles Taylor take in regard to an incentive or piece work system?

A. Oh, he was absolute—absolutely against it.

Q. Did he speak against it to people?

A. Oh, oh, yes, yes.

Q. Did he speak against it in your presence, to you?

A. Yes, yes.

Q. Do you recall during those same years any effort being made to ask the workers to give up overtime pay premiums, that is, time and a half or double time for certain overtime hours?

A. Yes, that—that was—that was—that was somewhere around '43, I think. Somewhere about there.

Q. Were there people in the local union that were in favor of that goal?

[fol. 289] A. Yes, I—there was, yes.

Q. Whom do you associate in that respect, with being in favor of the giving up of the overtime premium?

A. I can't recall a lot of the names, but I know Brodose, he was absolutely in favor of—of giving up the double time.

Q. What position did Charles Taylor take about that?

A. Well—he was the same as me; he didn't want to give up double time, and neither did I.

Q. Did he take a known and open position about it, did he speak about it?

A. Yes, yes.

Q. Did Charles Taylor at any time have a reputation of being a Communist?

A. Oh, no.

Q. Being pro-Communist?

A. No.

Q. Being a follower of the Communist line?

A. I—well—

Q. Wait, can you answer that?

A. I wouldn't say absolutely no, because around that time, why, I—I—I don't think that I could say that I knew much about Communism at that time, because I—well, I just never took too much of an interest in, in politics at that time.

[fol. 290] Q. Either at the time, or in retrospect, do you ever recall anybody mentioning that Charles Taylor was a follower of the Communist Party line?

A. No, no, I never did.

Q. Did you ever hear him speak in a derogatory manner concerning the United States Government?

A. Oh, no, never.

Q. In a derogatory manner concerning the Constitution of the United States?

A. No.

Q. Did he ever talk to you along the lines of being in favor of changing our system of government or economy in the United States?

A. No.

Q. Do you have any—

A. Of course I will say that we all have our differences of opinion, and maybe some do somethings, and some do some other thing that we just don't like. I mean that we might think a little different—

Q. Well, in relation to your thinking differently, did you ever hear Charles Taylor ever say anything about our system of government or economy which caused you to differ with him?

A. Oh, no.

Q. Do you have any opinion as to whether or not Charles [fol. 291] Taylor is a loyal American citizen?

A. Well, I—I—I think he is just as loyal as me. And I—I—I—I think I am a loyal American citizen.

Q. Would you say that the reputation he had amongst those who knew him at the plant was that of being a loyal American citizen?

A. Oh, yes.
Q. You have seen the statement of reasons in this case?
A. Yes, I did.
Q. Where did you read it?
A. In your office.
Q. Did it surprise you when you read it?
A. Yes—yes, it did.
Q. Do you have any reason or knowledge to believe that it is true that he was a member of the Communist Party?
A. No, personally I don't think he was a—a member. I don't.
Q. You don't know, but you—
A. I mean—
Q. You don't know one way or the other, but you are—
A. No, I don't know one way or the other, but as long as I have known him, I have never thought that he was pro-Communist, or anything.

Mr. Lipsitz: That's all.
[fol. 292] Chairman Waldman: Mr. Leone?

Cross examination.

By Mr. Leone:

Q. Whom would you consider to be Mr. Charles Taylor's close friends in the company at that time?

Mr. Lipsitz: You mean at work, you don't mean at the company—excuse me—you mean working for the company?

A. Working for the company?
Q. Working for the company.
A. At what time?
Q. 1942, 1943.
A. Well, I don't know too much about his close friends, because I didn't associate with him socially. But within the plant I know about the closest friend he had was Tommy Smith.
Q. Tom Smith?
A. Yes.
Q. And what kind—
A. The reason I know Tom Smith so much is because he's —he was from Scotland and I—I'm from England, and—

Q. What kind of a person was Tom Smith?

A. What?

Q. What kind of a reputation did Tom Smith have, a good reputation in the plant?

A. Oh, yes. You mean what—

Q. A person of un—

[fol. 293] A. In what way?

Q. A person of unquestioned loyalty?

A. Oh, sure, there is no question of that.

Q. Never associated with the Communist Party, or the Communist cause?

A. Not—not as I know of, no.

Q. Did you know a Freda Werb?

A. (No response.)

Q. Does the name mean anything to you?

A. Not much. Although I—I have read of—her name in some of these papers here.

But at that time, which I think we were talking about, why, I didn't know her, no.

Q. Did you ever associate Mr. Taylor with Freda Werb?

A. No, I never did, no.

Q. Did you ever have a discussion with Mr. Taylor regarding Allie Brodose?

A. In—in—

Q. Regarding Allie Brodose?

A. What way do you mean?

Q. Regarding whether or not he supported Allie Brodose

A. Well, I know he was on the same slate of—caucus that they had in, in those early days, but I can remember a lot of arguments that we had with Allie Brodose at that time that I am speaking about now.

[fol. 294] I was steward, you see, and we filled out a lot of grievances for inequities and working conditions at the time I am speaking about, when Charlie Taylor came on days, and we decided to organize the tool room—and—to better the working conditions. I—I remember we—we filled out a—maybe 70 or 80 grievances, and put them into the supervision, and then after that we got unsatisfactory answers from supervision, and we had to go up into the personnel section at Bell Aircraft.

And I can remember that Charlie and I, we'd go up there and we'd have some hot arguments with that Brodose in

there. I mean, he only seemed to want to let things slide, and he didn't want to push anything.

But Charlie and I, we wanted to get something, because after all the wages were low enough then.

Q. Did you ever have any discussions regarding whether or not Mr. Taylor would support Brodose at this particular election?

A. (No response.)

Q. Did you hear the question?

A. No—no, no.

Q. Did Taylor ever support Brodose at any time during this particular election?

A. What particular election was that?

Q. Well, the election in the spring of 1943, which I under- [fol. 295] stand resulted in the election of Matarski?

A. Yes, he—he—he was against Brodose then. I mean, he—I believe he was on another slate then, I would think. I'm not sure, but I think he was on another slate then. I'm not sure.

Q. Who?

A. Charles Taylor.

Q. Charles Taylor, from the testimony we have here, was on the Brodose slate.

A. Oh, yes, he was. Well, maybe he might have been on that slate, but he—he certainly didn't support him.

Mr. Leone: I have no more questions.

Chairman Waldman: Commander Dunstan?

By Commander Dunstan:

Q. Mr. Mear, how long was Mr. Taylor in Burlington?

A. Oh, I—I think maybe about 18 months, or might make it a little more or less. I'm not exactly sure. I think it was —oh, no, let me see. It was—I guess it was the middle of '43 he went up. I think it was the middle of '43.

It must have been longer than 18 months, yes, because I guess he was up most of the rest of the war.

I—I—I think it was about the middle of 1943, somewhere around about there, that he went to Burlington.

Q. And he came back in 1946?

A. Somewhere about there, yes, it must have been—it [fol. 296] must have been longer than 18 months.

Q. So that your daily contact with him was before the middle of 1943, and not afterwards?

A. Yes, it was before.

But after he came back, of course I had daily contact with him, until he got bumped, and he got transferred into 45. And then department 40 employees couldn't—couldn't go over into department 45.

Q. That was 1946?

A. Yes, yes, sir.

Q. So, in effect, then, you knew him daily or saw him daily, had contact with him daily—

A. Oh, yes.

Q. —during 1941, 1942, half of 1943 and part of 1946?

A. Well, I didn't have—have daily contact with him in '41, because he didn't come on days until about the middle of 1942.

Q. Maybe I misunderstood; I understood you to say earlier—

A. Well, I had heard of him before that.

Q. I understood you to say earlier that you had had daily contact with him between 1942 and 1946.

A. Oh, yes, from about the middle of 1942, yes.

Mr. Lipsitz: I think the testimony was, Commander, [fol. 297] that except for the times that he was not on the same shift with him.

Q. That does not include the period of Burlington?

Mr. Lipsitz: Certainly it does. He certainly does not testify that he had daily contacts with him when he was in Burlington, Vermont.

Commander Dunstan: That is what I am getting at.

Mr. Lipsitz: He didn't testify that way.

Of course, the records—

Commander Dunstan: I said I understood—

Chairman Waldman: Let's let the witness answer the question.

Mr. Lipsitz: All right, fine.

By Commander Dunstan:

Q. I understood you to say that you had daily contact with Mr. Taylor from 1942 to 1946.

A. No, the—the time that he was in Burlington I didn't have daily contact with him, because I didn't go up there. I stayed at the Elmwood plant.

Q. In other words, from about the middle of 1942 to about the middle of 1943 you saw him—

A. Yes.

Q. —approximately daily?

A. Yes, yes.

Q. Then you didn't see him again until some time in [fol. 298] 1946?

A. Yes.

Q. So that you only actually saw him or actually had contacts with him during the period in question for about one year; is that correct?

A. Yes—yes, yes.

Commander Dunstan: All right, that is my question. Thank you.

Mr. Simms: No questions.

By Chairman Waldman:

Q. Mr. Mear, you knew that in 1940, 1941 and 1942 and 1943, about that area, that Brodose was either a Communist, or a Communist sympathizer; is that right?

A. I didn't know at that time. I did read—read in the paper somewhere around '45 or '46—

Q. We are not interested in the subsequent years; but you tell me now, did you know either from your own knowledge or from what you heard in the Bell plant that Allie Brodose was either a Communist or a Communist sympathizer?

A. No, I didn't know. No, I—as a matter of fact, it never entered my head.

Q. Did you or not hear in the plant during the years 1940, 1941 and 1942, and around that period, that other persons in the plant were Communists or Communist sympathizers?

A. No.

[fol. 299] Q. You were not aware of any Communists in the Bell plant in '41 and '42 and '43?

A. That's—that's right.

I mean, that never entered my head at that time.

Q. Do you recall during those years that any individuals brought any literature in the plant for distribution to the employees which you would consider to be Communist Party literature?

A. No.

Q. Your answer is no?

A. No—no, I don't think so, no.

Q. Do you recall during those years that any of those individuals brought into the plant petitions for the signature of employees at the Bell plant which were for the support of candidates for the Communist Party in governmental elections, state elections, or national, or local elections?

A. I—I don't remember any specific petitions, but I think I do remember that the Communist Party at that time—that was, oh, well, '43, somewhere around about there, was getting petitions to get on the ballot.

Q. All right, now, can you recall whether those petitions were circulated at the Bell plant, the plant that you were working at?

A. I'm not sure that they were. At that time, no.

Q. What is your recollection based on, that the Com-[fol. 300] munists were trying to get on the ballot during those years; what do you remember about it?

A. Well, I believe I read that in the newspaper, about the Communist Party trying to get on the ballot.

Q. In any event, no Communist nominating petitions, for the purpose of getting on the ballot, or otherwise were presented to you either at the Bell plant or outside the Bell plant during the years 1941, and 1942 and 1943?

A. Not to me, no—no, no.

Q. And you don't know whether they were presented to any other employees of the Bell plant?

A. No, I don't.

Chairman Waldman: I have no further questions.

The Witness: See, it's—

Chairman Waldman: That's all right, I have your answer.

Mr. Lipsitz?
Mr. Lipsitz: Yes.

Redirect examination.

By Mr. Lipsitz:

Q. Mr. Mear, Commander Dunstan asked you if, based upon the facts that you recall, you had only known Charles Taylor well for 1942 and 1943, because he then left for Burlington; do you remember that?

A. Yes.

[fol. 301] Q. Now, if the facts are, and if the record accurately shows that he didn't leave for Burlington until some time in 1944, would you say that you knew him continually and saw him almost daily until that time?

A. (No response.)

Q. I am not asking you to decide whether he left in 1943 or 1944, I am asking you—

A. I'm not quite sure about the dates.

Q. Follow my question: If the fact is that he didn't leave until some time in 1944, would you then say that you knew him well and saw him daily until that period of time?

A. Yes, yes.

Mr. Lipsitz: All right, that is all.
Chairman Waldman: Mr. Mear, you may be excused.

(Witness excused.)

Chairman Waldman: Who is the next witness?
Mr. Lipsitz: Wagner, William.
Chairman Waldman: Mr. Wagner, before you testify, please be informed that Section 1001 of Title 18 of the United States Code makes it a criminal offense, punishable by a maximum of five years' imprisonment, $10,000 fine, ok both, to make a false statement or representation to any department or agency of the United States as to any matter within the jurisdiction of any such department or agency. Do you understand that?

[fol. 302] Mr. Wagner: I understand that.

Whereupon, WILLIAM WAGNER, called as a witness on behalf of the Respondent, was examined and testified as follows:

Chairman Waldman: Would you please give your full name and residence address to the reporter.

The Witness: My name is William Wagner. I live at 75 Spruce Road, Eggertsville.

Chairman Waldman: New York?

The Witness: New York, yes.

Direct examination.

By Mr. Lipsitz:

Q. Are you employed by Bell Aircraft?

A. Yes.

Q. How long have you been employed there?

A. About nine and a half years.

Q. In 1941 and 1942 and 1943 where were you employed, what department?

A. Department 40, tool room.

Q. Are you still employed there?

A. Yes.

Q. What plant were you employed at in those years?

A. The Elmwood Avenue plant in Buffalo.

Q. Do you know Charles Taylor?

[fol. 303] A. Yes, sir.

Q. How long have you known him?

A. Approximately 15 years.

Q. Did you get to know him when he came to work at Bell Aircraft?

A. I don't know if I knew him at the time when he was first employed.

I got to know him more when he came on the day shift. See, he was working nights, and I was working days.

Q. You got to know him, however, when he came to work on the day shift?

A. Yes, I did. I did.

Q. You place that about what year?

A. Oh, approximately '44, '43.

Q. Now, have you ever held a position or office in the local union?

A. I was a steward for a short time.

Q. During what period?

A. Well, I was a steward when I believe Charles was a committeeman.

Q. Would you place this in the area of 1942?

A. Yes, the latter part of '42, '43.

Q. Incidentally, did there come a time when Charles Taylor left and went to some other place?

A. He did go to Burlington, I know that.

[fol. 304] Q. Burlington, where?

A. Vermont.

Q. To work for whom?

A. Will you repeat the question, please?

Q. To work for whom?

A. To work for Bell Aircraft, of course.

Q. When was it, if you recall that he left, and went to Burlington, Vermont?

A. I think it was in about 1944.

Q. All right, then, until the time when he left, whenever it was, and from 1942, he was working on the same shift with you, in the same department; is that correct?

A. Yes, he was.

Q. Incidentally, how large an area did that department cover?

A. How large—how large an area?

Q. Yes, can you give us any dimensions of the department, or is that too difficult?

A. Oh, that would be too difficult.

Q. How many people were employed on the day shift in that department?

A. I'd have to guess at this one.

Q. You guess. I am talking about 1942, '43.

A. Oh, approximately maybe 75 people, or so.

Q. Did you all know one another, to one degree or another?

[fol. 305] A. I guess so. I would say so.

Q. Did you see Charles Taylor almost every day during that period when he was working on the same shift with you?

A. Yes, I seen him quite a bit.

Q. Did you know Allie Brodose during that same time?

A. I never had too much to do with him. I knew him, thought. I knew him.

Q. You knew who he was?

A. Yes, I knew who he was. I knew he was president of our local.

Q. Do you recall when he ran and then was defeated, in 1943?

A. I remember him being defeated, but I don't remember the details too much on that.

Q. I ask you to look at Exhibits 1, 2, and 3, which are on the table before you; and I ask you if that helps fix the time when he ran and was defeated?

A. (No response.)

Q. Do you see who opposed him?

A. Yes, I believe—I believe that's about the time he was defeated.

Q. Who was the successful candidate in 1943; do you recall?

A. I believe it was John Maturski.

Q. Do you recall around this same time there was any [fol. 306] effort made by any people in the plant to start an incentive or piece work system of one kind or another?

A. Piece work?

Q. Piece work, or incentive.

A. (No response.)

Q. My question is, do you recall whether anyone tried to get one introduced into the plant?

A. I don't remember, no, anybody trying to get anybody —I mean piece work started.

Q. Do you recall whether or not there was any dispute over a no-strike pledge at that time?

A. Yes.

Q. Was Brodose to your knowledge or recollection in favor of the no-strike, or against the no-strike pledge?

A. He was in favor of the pledge.

Q. Was he vigorously in favor of it; I mean, did he—

A. I would say so.

Q. What position did Charles Taylor have in respect to it?

A. Charles Taylor, he was opposed to it.

Q. Do you recall during this period of time any effort being made to straighten out inequities amongst the workers in the tool department?

A. Yes, I do. Very, very well.

Q. Was this a hot issue amongst the people in the tool [fol. 307] department?

A. Yes, it was a pretty hot issue, I would say.

Q. What position did Charles Taylor take in regard to it?

A. Well, Charles Taylor, he was the—the one that, as I remember, he started a—a meeting. We held a meeting, and he was the one that instigated that meeting.

We believed that we were being underpaid in the department, and we held a meeting. Charles, he led the meeting.

And through this meeting I believe that we organized our department pretty well,—so we did manage to get raises on our merits.

Q. Did you know whether or not Brodose was in favor or against this effort?

A. Brodose gave us no support whatever on this issue.

Q. Do you know whether he was solicited for support, whether he was asked to help?

A. I don't know for sure about that.

Q. Do you place this meeting and this effort while Brodose was still president?

A. Yes.

Q. So it would be either during the latter part of 1942 or the beginning of 1943; is that right?

A. Yes.

Q. Do you recall any local union meeting pertaining to giving up of premium pay for overtime?

[fol. 308] A. I was never present at a meeting. I recall the issue, but I wasn't present at a meeting, no.

Q. Was there a position taken by Brodose in regard to this, if you know?

A. Would you—

Q. Yes?

A. —repeat the thing again.

Q. First of all, you say you did not attend any meeting?

A. No, I didn't, no.

Q. But do you recall that there was any stand taken by Brodose that was known throughout the plant, in relation to the giving up of overtime pay, a premium for overtime pay?

A. Well, the talk throughout the plant, as far as I know—I said I wasn't at no meeting—but the talk throughout the plant was that Brodose was in favor of giving up the double time for overtime.

Q. And what was Charles Taylor's position in regard to that?

A. He did not want to give up the double time.

Q. He was fighting to retain it?

A. Yes.

Q. Did Charles Taylor ever talk to you about Communism?

A. Never.

Q. About the Communist Party?

[fol. 309] A. Never.

Q. Did he ever try to interest you in political subjects, that is, our governmental problems, or foreign affairs, or anything like that?

A. Never.

Q. Did he ever ask you to read any literature of any kind?

A. No.

Q. What kind of things did Charles Taylor talk to you about; I mean, what was the main thing that you would say he talked to you about?

A. Mostly—mostly about union affairs, and things that would benefit our department.

Q. Did he ever have a reputation during those years, that is, 1942, 1943, and if he left for Burlington in 1944 up until that time, or at any later time, of being pro-Communist, or sympathetic toward Communism?

A. No, he—I've—I would say definitely not.

Q. Did you read the statement of reasons in this case?

A. Yes.

Q. In my office?

A. Yes, yes, I—

Q. Were you surprised when you read those matters in there?

A. I was.

[fol. 310] Q. Had you ever heard any hint before that he ever claimed that he was a Communist?

A. No, never.

Mr. Lipsitz: I have no further questions.
Chairman Waldman: Mr. Leone?

Cross examination.

By Mr. Leone:

Q. Who would you say were Mr. Taylor's friends in the plant in 1942 and 1943?

A. Who were his friends?

Q. Yes. Close friends.

A. Well, he had quite a few of them in the department that I know of.

Theere was—if you want some names—there was Tommy Smith, a fellow by the name of Harold Mear, Dave Manson—

Q. Would you characterize Allie Brodose as one of his friends?

A. No, I—I—I don't think Charlie ever had anything to do with him socially.

He was—all I know about Taylor in his associations with Brodose was that he belonged to the same caucus.

Q. Was John Maturski a friend of—

A. Of Charlie Taylor's?

Q. Of Mr. Taylor's, yes.

A. I couldn't answer that question. I don't know if he [fol. 311] was or not.

Q. Freda Werb, do you associate her at all with Mr. Taylor?

A. I didn't know her.

I've heard of her name a lot, and everything, but—I really didn't know her.

Q. Yes, but did you associate her with Mr. Taylor?

A. No, I wouldn't.

Q. You wouldn't?

A. No.

Q. Jim O'Connor?

A. I don't know him either.

Q. You never heard the name?

A. No.

Q. Sam Weisman?

A. Never heard of him either.

Q. Never heard of him?
A. No.
Q. Clara Lester?
A. Never heard of her.
Q. Never heard of her?
A. No.

Mr. Leone: I have no further questions.
Chairman Waldman: Commander Dunstan?
Commander Dunstan: No questions.
[fol. 312] Chairman Waldman: Mr. Simms?
Mr. Simms: No questions.
Chairman Waldman: No questions.
Mr. Lipsitz: Just one I forgot before.

Redirect examination.

By Mr. Lipsitz:

Q. Did you ever hear Charles Taylor talk in a derogatory manner about the American Government?
A. No.
Q. About our—
A. No, he—
Q. —system of government?
A. No. He's never said anything drastic about the government. He, just as anybody else, might disagree with something, but he never said anything drastic about the government.
Q. Did he ever praise any other government than the United States Government?
A. No.
Q. Did he ever talk to you about wanting to change our form of government?
A. No.

Mr. Lipsitz: That is all.
Well, no.

By Mr. Lipsitz:

Q. Do you have any reservations about his being a loyal
[fol. 313] American?
A. I would say he is.

Q. The question is: do you have any reservations about it at all?

A. No.

Chairman Waldman: You may be excused, Mr. Wagner.

(Witness excused.)

Chairman Waldman: What is this witness' name?

Mr. Lipsitz: Tom Smith.

Chairman Waldman: Smith?

Mr. Lipsitz: Thomas Smith.

Chairman Waldman: Mr. Smith, before you testify, please be informed that Section 1001 of Title 18, United States Code, makes it a criminal offense, punishable by a maximum of five years' imprisonment, $10,000 fine, or both, to make a false statement or representation to any department or agency of the United States as to any matter within the jurisdiction of any such department or agency. Do you understand that provision?

Mr. Smith: Yes, I do.

Whereupon, THOMAS SMITH, called as a witness on behalf of the Respondent, was examined and testified as follows:

Chairman Waldman: Would you kindly give the reporter [fol. 314] your full name and residence address.

The Witness: My name is Thomas H. Smith. I live at 359 Wabash Avenue, Kenmore 17, New York.

Direct examination.

By Mr. Lipsitz:

Q. Mr. Smith, you are employed at Bell Aircraft?

A. Yes, sir.

Q. How long have you been employed there—and when you answer, direct your answers to the gentlemen in front. How long have you been employed there?

A. I was hired on June 10th, 1940.

Q. In what department did you work in 1941, 1942 and 1943?

A. I have been in the tool room all—ever since that day.

Q. And in 1941, 1942 and 1943, at which facility did you work; where was it located?

A. Elmwood Avenue plant.

Q. Incidentally, did you work there in 1944 also?

A. Yes, sir.

Q. Do you know Charles Taylor?

A. Yes, very well.

Q. How long have you known him, since about when?

A. Well, I recall Charlie Taylor about 1941, in the winter time.

[fol. 315] Q. Did you meet him—that is, did you first meet him as a result of his coming to Bell Aircraft?

A. Yes, I never saw him in my life before that.

Q. And after you met him did you become what might be characterized as a close friend of his?

A. Yes, I did.

Q. As a matter of fact, did you and he become almost one and other's best friends or what?

A. Yes, I associated with him in all kinds of phases. I went to the—

Q. Well, we'll talk about how you associated with him later.

Have you ever held office in Local 501?

A. Yes, I was a steward.

Q. Did you ever run for any office to which you were not elected?

A. I think they put me on the ballot one year for a trustee, and I think they got somebody else, and I don't think I run that year.

But I held an office as a steward for two or three years.

Q. Were you ever part of the Unite and Win caucus?

A. No, sir.

Q. Were you ever part of any caucus?

A. Well, I think it was the Rank and File. That was the [fol. 316] first time, 1946, I believe—maybe '45.

Q. When you became a steward was Charles Taylor an official of any kind in the union?

A. Charlie Taylor was chief steward; and he later got to be committeeman, and I worked under him.

Q. Did you ever visit at his home?

A. Yes, I did.

Q. Did you visit at his home frequently or infrequently?

A. Well, I don't remember every time, but quite often I was there.

Q. Is it possible that you would have visited his home even more often, except for problems he had at home with his wife?

A. Well, that was the main reason I stopped going.

Q. You know that he had marital problems with his wife?

A. Yes, I know.

Q. Did you and she get along, or were you unfriendly?

A. Well, I would say we were unfriendly.

Q. During the times that you visited at his home did you ever see any literature which appeared to be Communist literature—for instance, the Daily Worker?

A. Positively not.

Q. Any books of any kind, which you associated with Communism by their titles?

A. No, absolutely not, never.

[fol. 317] Q. Did he ever talk to you about Communism in any respect?

A. Positively not.

Q. Did he ever try to solicit you to become a member of the Communist Party?

A. Never.

Q. Did he ever talk to you favorably about Russia?

A. Never.

Q. Did he ever talk to you in a derogatory manner about the United States Government?

A. Positively not.

Q. About democracy?

A. Never.

Q. About our kind of economy that we have in this country?

A. Never.

Q. Is there a particular field in which he did have an interest?

A. Well, the reason I've got so close to Charlie Taylor—I don't know if I'm right in saying—I come from the old country, and I always thought to follow the trade union movement.

And I got to like Charlie because he was active as a steward and a committeeman.

And if he had once ever thought the other way, I don't think I would have followed him, because I don't think the [fol. 318] Communists believe in the trade union movement.

Q. Answer my question, did he have one overriding interest that you know of?

A. That's all I know him to be, a good fighter for the union.

Q. Did he spend a great deal of his time involving himself in union affairs and activities?

A. I think that was his main trouble. He spent too much of his family time, as far as that was concerned.

I didn't spend it, because my children were smaller.

Q. In addition to visiting him at his home, and associating with him in the shop, did you go to restaurants or taverns, or other places like that with him?

A. Well, Charlie was like me, he was a real sports fan. And his son was trying to be an amateur fighter, and we used to go to the amateur fights.

And the one thing his wife was mad at me for, I took Charlie Taylor to the first racetrack in his life. I play the horses once or twice a year, and that's all. And she told him I was a big gambler.

Q. You went to the races with him?

A. I went to Fort Erie; that's right in the neighborhood.

Q. Did you ever go out to any restaurants or bars with him?

[fol. 319] A. Well, I have had beers at bars with him. I have had french fries.

Q. You paled around with him?

A. That's right.

Q. I think you also told me—and perhaps this will refresh your recollection—that you would even go with him and his boys to the beaches and go swimming; is that right?

A. That's right. His boys were real athletes, and they used to do high-diving exhibitions.

Like you saw them yet, they are real athletes.

Q. Did this close association with Charlie Taylor continue until he went to Vermont?

A. Right up until the time he went to Vermont.

I was asked first to go to Vermont, and I refused because I happened to be playing soccer at the time. I was 39 years and I didn't want to go, I wanted to still play soccer.

Charlie Taylor took my place, and went to Burlington.

Q. Did you resume your relationship with him when he returned from Burlington?

A. Yes, I did. As a matter of fact, he visited my home in the meantime when he come home for a trip. I don't know if it was once or twice.

But the minute he came back I was in contact with him again.

[fol. 320] Q. Are you familiar during those years of any dispute over the no-strike pledge?

A. Yes, sir.

Q. Were there those in the local union who were vigorously in favor of the no-strike pledge?

A. Oh, yes.

Q. Who would you identify with that point of view?

A. Well—well, Charlie Taylor—

Q. No, who would you identify in favor of that point of view?

A. Well, I—from the pitch that I see here, I remember Allie Brodose quite frequently used to come over, and he was against it.

Q. Against what?

A. I mean he was always talking that we didn't want no trouble.

Q. In other words, he was vigorously in favor of the no-strike pledge; is that right?

A. That's it.

Q. Did Charlie Taylor take a position in regard to it?

A. He always seemed to be on the opposite side.

Q. Would you say that he was strike-happy, or what was his position about strikes?

A. No, no, Charlie wasn't strike-happy, in my estimate. Charlie always was just fighting for the union, and if the [fol. 321] things called for it, he would take a stand, what he thought was right.

Q. In other words, would you say it is fair to say that he wanted to reserve the right to strike, if it was necessary?

A. Yes, positively that was the way I figured it.

Q. Do you recall any issue involving the attempt to impose incentive plans on the workers of Bell Aircraft?

A. Well, at one time now I—I can't recall the exact date—it was either '42 or '43, they wanted us to give up the double time, or they wanted—

Q. I am talking first about incentive.

A. Well, incentive. They wanted to try and get a bonus system.

And he being a tool maker and working in the tool room, I think a bonus system was outmoded, as far as I was concerned.

Q. What position did Charles Taylor take?

A. Charlie Taylor took the same position. He didn't want no incentive pay. That was all.

Q. Do you exchange the words "bonus," and "incentive system"; do they mean the same thing?

A. Yes, the same thing.

Q. How about the issue of overtime pay, for instance, double time pay; was there an issue about that?

A. Well, there was some issue brought up now, maybe [fol. 222] 1942—around there. And they were trying to get away with it.

Q. Who was trying to do away with it?

A. Well, I think it was the international. We had meetings, and there were a vote on it, and we had a big meeting downtown.

Q. You mean a meeting of the local union?

A. Yes, yes, the whole body, a membership meeting.

Q. Was this at a time when Brodose was president?

A. Yes.

Q. Did he, meaning Brodose, take a stand on this?

A. Yes.

Q. What was his stand?

A. Well, he took a stand that we should give up double time, and we should give up—you know, like the extra pay time for Saturday and Sunday, and we should work on a 10-hour day, straight time.

Q. What position did Charles Taylor take about it?

A. Charles took the opposite, he always said we shouldn't give up anything that was going to weaken our union. He

figured if we worked overtime, worked 10 hours we should get paid overtime for the two extra hours.

Q. And also double time?

A. On Sundays.

Q. Do you recall any other membership meetings of any kind where Taylor and Brodose took opposite points of [fol. 323] view, other than the issues you just told us about?

A. You mean meetings, general meetings where they—

Q. General membership meetings or otherwise?

A. Well, I think the first time I ever really got in contact and saw Charlie talking at any meeting was at 1941.

Q. What happened then?

A. And then we were up for a 12½ cent raise. I think that was the year the war started, and they were fighting back and forth, some wanting 12½, some wanted 15.

And Charlie got up, and he wanted 20 cents. And even after we already had voted accepting the 12½, he thought the union should go in and negotiate with the company to still fight for the 20. But he went along with the 12½.

Q. Was there any opposition to Brodose on that issue?

A. That was the—that's what I am trying to get at. Allie Brodose, he wanted us to go back to work, he would have gone back maybe for five cents—I don't know.

Q. You say, "get back to work"; you hadn't gone out on strike, had you?

A. No.

Q. Is it a fair statement that generally speaking Brodose's policy was no interference with production, no interference of any kind?

A. That's what I would say.

Q. Regardless of what it meant—

[fol. 324] A. Yes.

Q. What it meant to the employees involved; is that correct?

A. That's what I would say.

Q. Is it fair to state that Taylor took a different position in this respect?

A. That's right.

Q. If you could characterize Taylor's role in the local union and his activities during those years, would you say

he was a follower of Brodose, a follower of somebody else, or was he independent; how would you describe it?

A. Well, from knowing Charlie as long as I have, I think that Charles fought with every group out there. I could call—you name every—

Q. Don't go so fast—

A. I'm sorry.

Charlie fought with practically every guy. I recall the first big difference we had. I was a steward under Charlie when Jimmy Schuetz and Rosmyslowski were fired. And Charlie Taylor and I were trying to get them back to work. Charlie was the chief steward, and I was under him, and we had several meetings with John Beady—he was labor relations—Mr. Roberts—I think it was Roberts, or Robertson; and Allie Brodose was always saying, "Let's forget about them now, they will eventually get back to work, but [fol. 325] let's forget about them."

And Charlie said, "No, two working men are out, and we want to get them back as of now."

Q. Well, in answer to my question, then, would you say, if you could characterize his role, that he was an independent person?

A. Well, that's what I tried to say.

Charlie fought practically every group out there, because as far as I know, Charlie's just for the trade union movement. When he thinks he is right he'll fight anyway.

Q. Was there ever any hint of any kind that you knew of that he was a Communist or a member of the Communist Party?

A. Never at any time.

Q. Did you see the statement of charges against him in my office?

A. Yes, I read them, and that's why I was very much—

Q. Were you surprised?

A. I was very much surprised.

Q. And you never heard anything like that, either by way of hearsay, or gossip, or—

A. Oh, well, there's always that kind of hearsay. If you vote for somebody, or somebody in the shop you can say right off the bat, "He's no good."

Q. Have you ever heard anything like that about Charles Taylor?

[fol. 326] A. I imagine I have, maybe in the late—1941, 1942 or 1943, when he was running. Charlie was supposed to be on the same ticket—

Q. Well, was what you heard derogatory about him based on the fact that he ran on the same ticket with Brodose?

A. That's what I mean, yes.

Q. Other than that, did you ever hear anything derogatory?

A. No.

Q. Do you have any opinion as to his loyalty?

A. Yes.

Q. What is your opinion?

A. Well, I think—if I phrase it the right way—if Russia or any foreign country invaded this country, Taylor would be the first guy to get shot fighting them. That's the kind of guy he is, to me.

Q. In other words, in your opinion he is a real, loyal American?

A. He's a real, 100 per cent American.

Q. Did he have a reputation as being a good worker or an indifferent worker in the plant?

A. Well, that's one thing I can vouch for positively: he works right as close as him to me (indicating)—

Q. Referring to the reporter.

A. I don't know—yes.

[fol. 327] And Charlie Taylor is one—we have 180 toolmakers, and I'll say he's the top five. He's the best—one of the best all-around men, he can do—run any machine, and he does a good job.

But he has the best set of tools, and you can check with anybody in the tool room—Charlie Taylor's got them.

Q. Did he ever ask you, in your social activities, or otherwise, to go with him to any meetings other than union meetings, meetings of any kind?

A. No.

Maybe I'll be at his house with a group of people from the tool room. I mean that group, every two or three people who were trying to get more money for toolmakers. We

decided to go over to Charlie's house, I think with a couple of beers, and we talked about getting more money for the toolmakers, because at that time we were getting very, very underpaid.

Q. Well, other than meetings involving the employees of Bell, or union meetings, did he ever ask you to go to any meetings?

A. Positively not.

Q. During the years 1942, 1943, and 1944 do you know of any other person working with him at Bell that was a closer friend of his than you?

A. No, I would—I don't know for sure, but I was really [fol. 328] close to him; anything that went wrong with my house, he can fix electric, he can lay linoleum, he can fix a car; and I always called him.

Maybe that's why he is a friend of mine.

Q. Well, regardless of why—

A. No, I mean—

Q. —can you think of any person that would be more friendly than you would be?

A. I don't think so. I'm not positive. I think I was closer to him than anybody.

Mr. Lipsitz: That's all.

Chairman Waldman: We will examine; I think we will be able to finish this evening, and maybe save him the trouble of coming back.

Mr. Lipsitz: All right.

Chairman Waldman: Mr. Leone.

Cross examination.

By Mr. Leone:

Q. Did your friendship with Mr. Taylor start out immediately when you met him, or did it build up?

A. It built up gradually.

Q. Through the years?

A. Talking about the union movement we got closer together.

Q. Were you familiar with Mr. Taylor's activities in the [fol. 329] years 1942 and 1943?

A. Yes, I was.
Q. You were?
A. Yes.
Q. Would you know, for example, whether or not Mr. Taylor attended Communist Party meetings in 1942 and 1943, if he did.
A. Well, I think I was close enough that he would have told me about it.
Q. He would have told you?
A. I imagine he would.
Q. Did Mr. Taylor ever speak to you about Clara Lester?
A. Clara Lester?
Q. That's right.
A. No, I have never heard that name before.
Q. Sam Weisman?
A. I never heard that one either.
Q. George Lohr?
A. No.
Q. Jim O'Connor?
A. I think I know him from the shop, Jim O'Connor.

Mr. Lipsitz: Excuse me; is the question did Mr. Taylor ever talk to you about them?
The Witness: No, he never mentioned the name, positive.
[fol. 330] Chairman Waldman: Mr. Leone?

By Mr. Leone:

Q. Did he ever mention the name Jim O'Connor to you?
A. No, no. The name just sounded familiar to me.
Q. Freda Werb?
A. No.
Q. You never had a discussion with him regarding Freda Werb?
A. Not that I know of.
Q. And he never mentioned the name to you that you can recall?
A. No, I can't recall.
Q. Svea Katc?
A. Beg pardon?
Q. Svea Katc.
A. What's the first name?

Q. Svea, S-v-e-a?

A. No, I can't—that's—

Q. The name doesn't mean anything to you?

A. No, I don't—

Q. Did you ever have a discussion with Mr. Taylor regarding Allie Brodose?

A. Oh, yes.

Q. When Mr. Taylor's name appeared on the slate along with Allie Brodose, did you have anything to say about that?

[fol. 331] A. Well, when that—his name appeared on that slate, Charlie come over, and he talked—used to talk at lunch time, a few of the toolmakers used to. And he said he didn't want his name on that slate at that time. And he didn't know why it was put on.

Because in the meantime I knew he was having a lot of controversies with Allie Brodose.

Q. Did you suggest to him at the time anything he could do about it?

A. No, I didn't. No.

Q. Did you feel that his name should appear?

A. I felt his name shouldn't appear.

Q. Should not?

A. Well, that's the way he was making it known to me, too. I was kind of disappointed, and he told me the reason—somebody put it on, or whoever put it on; that he wasn't in favor of it, and he didn't go around—usually when your name is on the slate, you go around to all the toolmakers, especially, where he is known, and campaign on that slate. And he didn't do that.

Q. Did he indicate to you that his name was put on the slate without his permission?

A. Well, that's the way I take it to be. Otherwise he wouldn't be so disappointed in it.

Q. Did he say that?

[fol. 332] A. That's the way he told me.

Q. Did Charles Taylor ever say to you that at one time—"At one time I may have thought along Communist lines"?

A. Never.

Q. He never made that statement?

A. Never.

Q. Nor anything similar to it?

A. Never.

Q. Did Charlie Taylor ever say to you that he had been interviewed by representatives of the FBI?

A. No, I don't recall him ever telling me that.

Q. Do you know whether he ever was?

A. No, I don't.

Unless with this—we filled up forms in the plant, and I imagine people do that. Now, I don't know. I have been filling them up since '46, and I think maybe Charlie was similar.

Q. That has nothing to do with my question.

A. Oh, well, no, he never told me. No.

Q. Do the names—well, let me ask them one at a time. Peter Grant?

A. Yes.

Q. Does Peter Grant mean anything to you?

A. Nothing.

Q. Frank Herron?

A. Nothing, positively.

[fol. 333] Q. Charles Doyle?

A. Well, yes, I know Doyle by name, and by reading about him.

Q. And what do you know about him?

A. Well, he happened to be Scotch, and I'm Scotch; and he was born a few miles from me. That's all I know about him.

Q. That is all you know about him?

A. If it's the same Doyle I'm thinking about. You mentioned who the Doyle is. That's the only Doyle I know. I never talked to the man in my life, I never saw him except in papers.

Q. What did you read about him in the paper?

A. Well, he was Communist-inspired.

Q. Did you ever hear his name mentioned by Mr. Taylor?

A. Positively not.

Q. Vincent Fantauzzo?

A. No, I never heard—I don't remember that I have heard.

Q. Have you ever had any political discussions with Mr. Taylor?

A. No, Charlie don't seem to talk in that line. Mostly his talking is on the trade union movement.

Like I don't know if he belongs to any Democratic Party, or Republican Party, or any other party.

Q. You never discussed—

[fol. 334] A. Well, I—

Q. —even who you were going to vote for?

A. Well, I imagine he vote the same as I do, the Democratic line, because we both think that the Democrats do more for labor. That's all I know. That's the reason I'm a Democrat.

Q. Do you remember during the war the talk about the starting of the second front?

A. Yes, I believe I recall reading something about it.

Q. Do you recall what Mr. Taylor's position was regarding the starting of a second front?

A. No, I don't think Charlie talked in an international vein anyway. I don't think he ever talked to me in that way.

Q. Do you consider that Charlie Taylor's views in so far as politics were concerned, were radical?

A. No, sir, positively not.

Q. Would you say that Charles Taylor is an argumentative sort of person?

A. Well, maybe he's a little heated up if he's debating a union question, but I wouldn't say he went around looking for it.

Q. What I mean is, would he pick the other side of a question just to argue?

A. No, I don't think he would.

Mr. Leone: I have no more questions.

[fol. 335] Chairman Waldman: Commander Dunstan?

By Commander Dunstan:

Q. Mr. Smith, who was Floyd Gierman?

A. Well, Floyd is a pretty good friend of mine. We have been in the same department for—well, he started two years ahead of me, maybe 18 months. He works beside me at Bell, and he's a jig and fixture builder, I'm a fixture maker—toolmaker.

Q. Has he been there right through from 1949 to the present time?

A. All the way through, yes.

Q. Did you ever hear of an organization called the Niagara Frontier Committee?

A. Never.

Commander Dunstan: That's all.

Chairman Waldman: Mr. Simms?

Mr. Simms: No questions.

By Chairman Waldman:

Q. Mr. Smith, you have been at Bell since about 1940; is that right?

A. Yes, that's right, sir.

Q. Can you recall during the years 1941 and 1942 whether any petitions were circulated for signature by the employees in the company, which were Communist Party nominating petitions?

A. No, I don't recall that at all.

Q. During your friendship with Mr. Taylor, did you ever [fol. 336] hear from him that he had ever either signed any of those petitions or circulated them, or anything of that type?

A. No, I only knew what I read, the charge that he had signed that. I never was told, or never talked to him about it.

Q. Prior to seeing the charges you had no knowledge of any such—

A. Never, no, sir.

Chairman Waldman: Mr. Lipsitz, do you have anything further from this witness?

Mr. Lipsitz: No.

Chairman Waldman: Mr. Smith, you may be excused.

(Witness excused.)

Chairman Waldman: Now, Mr. Lipsitz, during one of the recesses we discussed the fact that this case would have to be adjourned, since you do not desire to come in on Monday, the 5th of November to continue; is that right, sir?

Mr. Lipsitz: That's impossible—that's right.

Chairman Waldman: And we discussed a mutual, agreeable date, at least as of now, for the adjourned date of this

hearing, which would be November 14, 1956; is that right, sir?

Mr. Lipsitz: That's right, subject to my checking my schedule. And I will advise you at the very beginning of the week.

Chairman Waldman: Fine.

So that we will leave it, then, that this case is adjourned [fol. 337] to November 14, 1956, pending confirmation through the mail by you.

Mr. Lipsitz: At what time?

Chairman Waldman: 9:30, if it is convenient. If you have some other time in mind, let us know.

Mr. Lipsitz: That is convenient.

Chairman Waldman: Fine.

(Whereupon, the hearing was adjourned to November 14, 1956, at 9:30 o'clock, a.m.)

[fol. 338]

PLAINTIFF'S EXHIBIT No. 3

BEFORE NEW YORK INDUSTRIAL PERSONNEL SECURITY HEARING BOARD

45 Broadway, New York 6, New York

HEARING

Wednesday, November 14, 1956

[fol. 340]

Transcript of Proceedings

Chairman Waldman: Mr. Lipsitz, this is the 14th of November, 1956, and pursuant to the arrangement made at the hearing previously held in this matter on November 1, 1956 and November 2, 1956, this case will continue on this adjourned date.

All members of the Board who were present at the time of adjournment of this hearing are again present this morning.

What is your procedure to be this morning, Mr. Lipsitz? Do you have any additional witnesses?

Mr. Lipsitz: We have two witnesses, and then Mr. Taylor.

Chairman Waldman: All right, sir; what is the name of this witness?

Mr. Lipsitz: Robert Meredith.

Chairman Waldman: Mr. Meredith, would you sort of face the center—that's right.

Mr. Meredith, before you testify, please be informed that Section 1001 of Title 18, United States Code, makes it a criminal offense punishable by a maximum of five years' imprisonment, $10,000 fine, or both, to make a false statement or representation to any department or agency of the United States as to any matter within the jurisdiction of any such department or agency.

[fol. 341] Do you understand that statement?

Mr. Meredith: Yes, sir.

Whereupon, ROBERT MEREDITH, called as a witness in behalf of the Respondent, was examined and testified as follows:

Chairman Waldman: Kindly give your full name and residence address to the reporter.

The Witness: Robert Meredith, 124 Wendell Avenue, Buffalo 23, New York.

Chairman Waldman: Proceed, please, Mr. Lipsitz.

Direct examination.

By Mr. Lipsitz:

Q. You are employed at Bell Aircraft?

A. Yes, I am.

Q. How long have you been employed there?

A. A few months short of 18 years.

Q. Were you employed there in 1941, 1942, and 1943?

A. Yes, I was.

Q. In 1942 in which facility of the company were you employed?

A. The Elmwood Avenue plant.

Q. Did you leave there some time in 1943 to go to another facility?

A. Yes, one time in April 1943 I transferred to the [fol. 342] experimental division. I transferred to experimental division.

Q. Was that out of the Elmwood Avenue plant?

A. Yes, it's located on Main Street in Buffalo.

Q. During 1942 and part of 1943 that you were at the Elmwood Avenue plant in what department did you work?

A. I worked in Department 60, which was part of the tool room.

Q. Was there another department number for another part of the tool room?

A. There was also Department 40, tool room.

Q. Was your department near or adjacent to the other department?

A. It was about 500 feet.

Q. Did you know Charles Taylor during 1942?

A. Yes, I did.

Q. Is that when you first get to know him?

A. Some time in 1942.

Q. What connection did you first get to know him in, how did it come about?

A. I was a steward in Department 60, and Taylor was a committeeman in Department 40. And my problems as a steward, when I needed additional help, you referred to a committeeman to give you additional help. And in those days you could choose any committeeman you pleased in that vicinity.

And I chose Taylor to be my higher representative, [fol. 343] because he was more familiar with problems concerning the tool room. And I did come in contact with him very often.

Q. During the time that you had relationships with Taylor in 1942, were they on a daily basis, a weekly, basis, or can you give us any understanding of how regular they were?

A. Well, at least twice—at least twice a week. Sometimes more often.

Q. Did you know him outside the relationship you had with him at the plant?

A. Well, I knew him at union meetings, and we had—after meetings we had sociable drink—a sociable drink or two.

Q. You had never been over at his home during that time?

A. Not during that time, no.

Q. How about during 1943?

A. During that time either.

Q. Have you been to his home subsequent to that time?

A. Around '40—well, I'd say around '48, '49.

Q. Going back, then, to the 1942, 1943 period, did you associate Charles Taylor with any particular group in the local union during that period?

A. Yes, he—he belonged to—I can't think of the name of it.

Q. Let's see if we can't help you. I show you Exhibit No. [fol. 344] 1, and ask you to look it over and see if that refreshes your memory as to the group, if any, with which you identified Charles Taylor?

A. Yes.

Q. What—

A. Unite and Win group.

Q. In what respect did you associate him with that group, because of running as a candidate, or what?

A. Well, not in the beginning, but most—well, I won't say most, but a lot of representatives did belong to a group, or at least a so-called group. And I assume that Taylor in '42 did belong to the Unite and Win group.

However, in '43 he ran on their slate, and of course that assured me that he—I figured he must have belonged to a group.

Q. So that at least by 1943 you formed a conclusion in your own mind that he must have been a member of that group, if he ran on their slate; is that correct?

A. Yes, that's right.

Q. Was that the dominant group in that plant so far as being active in local union politics is concerned, up until that time, up until 1943?

A. Up until 1943, up till 1943 I think—in my opinion it was the only group that I know of.

Q. Was that group considered to have been, back in [fol. 345] 1942, a Communist group of any kind?

A. Well, I had heard remarks that would indicate that; however I didn't really know.

Q. What kind of remarks did you hear which would indicate that there was something about the group—

A. Well, when—

Q. —that was associated with Communists?

A. At meetings or discussion in the shop with other representatives, they'd associate the fellow who was president, Allie Brodose, as being connected with the Communist Party.

Q. Now, I asked you, and I ask you the same question that I asked you before, did you associate the entire group that was with the Unite and Win as being a Communist group?

A. Oh, no, no.

Q. But you are saying, then, is at least in so far as you had heard, its president, Allie Brodose, was alleged to have been a Communist; is that correct?

A. At least associated.

Q. You mean at least he was alleged to have been associated with Communists?

A. Yes.

Q. Did you ever associate Charles Taylor with being a Communist or follower of the Communists?

A. No, I never did.

[fol. 346] Q. Are you familiar with any of the issues over which sides were chosen in the local union back in 1942; for instance, incentive pay plan?

A. Yes; and the no-strike pledge and 10-hour day. Those are the bigger issues.

Q. How about the voluntary giving up of premium pay for overtime work?

A. Yes, that was another big issue.

Q. Do you know, in respect to any of those issues, where Charles Taylor stood, of your own knowledge?

A. My own knowledge, I don't think he was really against any of them; I think he was more for modifying them or changing them, to be more suitable to the union, rather than the way they were proposed.

Q. Well, was there a particular point of view that the Communists or those alleged to be associated with the Communists had on some of these issues?

A. Well, they was insistent on them being enforced all the way.

Q. Well, let's take the no-strike pledge; was there a particular point of view that was known to have been held by the Communists about the no-strike pledge?

A. Well, their point—I can say it now, whereas I couldn't have said it in those days, but I can see it now. They were for all-out production at any cost, and at any cost to any individual in the union, because Russia was an ally. [fol. 347] Q. Well, you say that you can see it today, but you couldn't see it then; you mean that upon reflection you now understand—

A. Right.

Q. —that that was the motivation for this?

A. Right.

In those days I didn't know a Communist from a street beggar.

Q. Was Charles Taylor ever known to you to have taken a position against a blanket no-strike clause?

A. No.

Q. Did he ever take issue—speak to the Board, please. Maybe you didn't understand: did he ever take issue with the point of view which said "production, regardless of the cost"?

A. No; in my discussions with Taylor in those days he wasn't against the no-strike pledge, but he didn't want to give up all of the rights that a union has to strike, if necessary, for a good issue, a good union issue.

Q. All right; in other words, he was not in favor of an all-out no-strike pledge?

A. That's right.

Q. Do you recall him speaking at any particular local union meetings where he may have spoken out on any of these issues?

[fol. 348] A. I do, but I couldn't—I couldn't truthfully give verbatim what his speeches were on.

Q. Do you know whether he was commonly thought to be a Communist follower at any time?

A. No, I don't.

Q. You never heard that he was thought to have been a Communist follower?

A. Never heard it.

Q. Did you see the statement of charges in this case, the statement of reasons, rather?

A. Yes, I did.

Q. Were you surprised when you read those?

A. I was very surprised.

Q. Are you skeptical of them, or do you believe that they are truthful?

A. I don't believe that they are true.

Q. Do you know Gilbert McGovern?

A. Yes, I do.

Q. Does he have a particular reputation in the plant?

A. He sure has.

Q. What is his reputation?

A. He is the biggest Red-baiter that Bell Aircraft ever employed.

Mr. Lipsitz: I think that is all the questions I have at this time.

[fol. 349] Chairman Waldman: Mr. Leone.

Cross examination.

By Mr. Leone:

Q. When Mr. Taylor ran on the Unite and Win slate, did you support him?

A. Yes.

Q. Did you support the Unite and Win slate?

A. Not to the man. I—at that time I chose people that I cared to support, and Brodose wasn't one of them, because I had reasons for not supporting him—I mean, other than him being pointed as being a Communist. I mean other than that.

Q. You didn't refuse to support Brodose because of his reputation as being sympathetic to the Communist Party—it had nothing to do with it?

A. Well, I didn't really even—like I said before—or stated before, I didn't even know much about Communism. I mean, to me it wasn't an issue in the early '42, when I first met Brodose.

Q. Do you know who was one of the leading opponents of Brodose during that election?

A. The '43 election?

Q. Yes.

A. Oh, yes.

Q. Who was that?

A. John Maturski.

[fol. 350] Q. Do you know what his platform was?

A. Well, he was striking out strictly against the Communists.

Q. Then Communism was an issue?

A. Oh, yes, it was an issue.

Q. It was an issue in that particular election?

A. It was an issue.

Q. But in so far as your vote was concerned, it was not an issue?

A. Oh, yes, it was an issue. I didn't say it wasn't an issue. I just said that I had reasons for not supporting Brodose, for other reasons, other than him being a Communist.

Q. Well, did you in lending your support to those individuals who were on that slate consider that you were lending support to a slate that had been branded as being in sympathy with a Communist cause?

A. Well, I didn't believe that the slate—people running on the slate—were Communists, actually. Except—well, Brodose is the only one who I can actually point to now and say that he was accused at that time of being associated with them.

Q. Is it your belief that Brodose was not the type who could exercise influence over other individuals who were on his slate?

A. Oh, I suppose—he as well as anyone else might be [fol. 351] able to exercise some influence one way or another on other individuals.

Q. Well, now, specifically as it relates to Taylor, do you know whether or not Brodose could exercise influence over Taylor?

A. I don't think he could, not over Charlie.

Q. What do you base that on?

A. Because Charlie argued with him all the time about issues on the floor, and took stands against Brodose continually.

Q. We are speaking now of the period 1943.

A. Around '42—

Q. And we are speaking specifically about the time that Brodose ran on the Unite and Win slate, and Taylor was on the slate, speaking of arguments that took place during that period?

A. Yes, at that period, and other periods.

Q. And you remember specifically any arguments that you heard between Taylor and Brodose?

A. Well, I can remember one incident—I can't remember all of the details on it.

But I do recall one incident we had: it was in Department 40, and I was down to see Taylor about another problem, and Brodose was there, and he was arguing with Brodose about not giving enough support to one fellow by the name of Bert Rowe, who had been fired. That was in '42, I believe. [fol. 352] And Brodose's position was that he couldn't bother supporting him, because the issue to him wasn't great enough.

And Taylor argued that point with him — remember that.

Q. Did you ever hear him argue any point which might have indicated whether or not one or the other had Communist sympathies?

A. No, no.

Q. Have you ever discussed Communism with Taylor?

A. Never.

Q. Do you know what his views are about Communism?

Mr. Lipsitz: Are you asking about the present time, or at the time of the statement of reasons?

Q. I'd like to restrict it to the period that we are speaking of; do you know—did you know his views regarding Communism at that time?

A. No, Taylor never discussed Communism at all with me, that I can ever recall.

Q. Did you associate Taylor with any individuals on that slate, on the Unite and Win slate, that he was particularly friendly with, or spent a lot of time with?

A. No, I can't say truthfully I can.

Mr. Leone: I have no further questions.

Chairman Waldman: Commander Dunstan?
[fol. 353] Commander Dunstan: No questions.
Chairman Waldman: Mr. Simms?
Mr. Simms: No questions.
Chairman Waldman: I have no questions.
Anything further from this witness, Mr. Lipsitz?
Mr. Lipsitz: Just a minute, please.

Redirect examination.

By Mr. Lipsitz:

Q. You stated that you had reasons other than the claim that you had heard that Brodose was associated with the Communists for not supporting Brodose; what were those reasons?

A. Individual grievances I had in my own department while I was steward. I just never got any support from him at all, and I had to walk that 500 feet to get ahold of Taylor for every issue I needed help on.

Q. Did you form a conclusion about Brodose's militance as a union officer?

A. Well, in those days I don't think he had any, in my opinion.

Q. Did you distinguish that from Taylor's position?

A. Yes, I did.

Q. How would you distinguish it?

A. Well, when I had an issue that required at least the presence of an officer higher than a steward, I—at least when I had an issue that requested the presence of an [fol. 354] officer higher than a steward, which was myself, I tried to get the president or someone higher; and every time I'd contact him, he'd just brush me off, say he was too busy, or that I don't have an issue big enough, and go back to my department and forget it.

Well, I used to go then to Taylor and explain my problem to him, and he never once hesitated to help me with any problem I ever had.

And at that time—after a few months of that—I had just my fill of Allie Brodose.

Q. Referring to Exhibit No. 1, on the rear side of which appear the names of some of the officers of the Unite and

On slate, did you support any of those individuals in addition to Taylor?

A. I supported Bob Siegler—I knew him quite well.

Q. Robert Siegler?

A. Right.

I don't recall whether I supported Marzinsky or not. I think he was on the third shift,—I didn't know him too well.

Q. Did you—

A. Joe Maitre, I supported him.

Q. Is he still working at the plant?

A. Yes.

Q. What kind of a job does he have?

A. He's a foreman of maintenance.

[fol. 355] Q. That is, he is a company representative?

A. Yes.

Q. Did you at the time you supported Joseph Maitre and Robert Siegler believe that you were supporting a Communist group in the plant?

A. No.

Q. You supported them as such, as individuals?

A. As individuals, good unionists.

Mr. Lipsitz: That's all.

Chairman Waldman: Commander Dunstan?

Recross examination.

By Commander Dunstan:

Q. Mr. Meredith, in 1943, there was a strike at Bell, what was the reason for that, if you know?

A. A strike?

Mr. Lipsitz: Just a minute. May I object on the grounds that if I understand what Commander Dunstan is getting at, he is referring to testimony which did not show that there was a strike, but there was testimony about a walkout of employees. And I think there is a legitimate distinction.

Chairman Waldman: All right, let's call it a walkout.

The Witness: I followed it; however, at the time of the incident I was no longer in the Elmwood plant, I was at the experimental division on Main Street. And the trouble I

know was in my former department, and I merely followed [fol. 356] it through the leaflets that finally came to our plant.

That's—that's as far as I was involved in it.

Q. Do you know what the reason for it was?

A. Well, it was unsettled grievances. It stemmed, I believe, from the second shift in the tool room, on grievances unsettled and piled sky high, and they couldn't get any answers from them, from the company.

And I later found out that they couldn't get too much help even from the top union officers. And the people more or less had to take steps in their own hands—the issue.

Q. You say that they couldn't get assistance to settle these grievances from the top union people; is that correct?

A. Right.

Q. Who are they?

A. Well, that was Allie Brodose at that time. I can't recall all the officers at that time.

Q. Was Mr. Taylor a committeeman in the—

A. Yes, he was a committeeman.

Q. Who got tied up with these grievances at that time?

A. Well, he was on the day shift. The grievances, if I remember correctly, were from the second shift.

And the issue really started on the second shift, and I believe ended on the second shift. I don't think it had spread to the first shift, if I remember correctly.

But it would have, or could have, possibly would have—[fol. 357] if they hadn't settled it by, possibly, the couple of walkouts they might have had.

Q. You don't know who the individual concerned in the second shift who should have handled the grievances was, do you?

A. You mean the top officer or the immediate representatives?

Q. Whoever the grievance would go to?

A. Oh, you mean the—now you are speaking of company representative or—

Q. No, the union.

A. On the second shift I do not know who he would have been. I know there was James Schuetz; I don't know whether he was vice-president at the time, or not, but

he was also in the tool room, and on the second shift.

And there was Joe Rosmyslowski. I believe he was a committeeman on the second shift, too, at that time.

Q. But you don't recall any reasons as to why they were unable to settle the grievances?

A. Well, it was poor cooperation from management, starting in the lower levels and the immediate foremen in the departments, where all grievances actually started.

And when the grievances were written and carried through to step after step even when it got to the labor relations department of Bell Aircraft, they still weren't settled. Just keep piling up.

[fol. 358] I mean, that wasn't—that was in all departments at the time. I mean, it was quite an issue in that period there, where we just couldn't settle any grievances at all.

Q. Just that one department, or throughout the plant?

A. No, it was the—all the plant.

Q. That was about mid-1943, wasn't it?

A. I'd say it was, yes, sir.

Q. How much longer after that walkout, did Mr. Taylor stay at the Elmwood plant?

A. Well, like I said, I lost some time in the latter part of April or the first of May, and I went to the experimental division. And I lost contact with Taylor and everybody else in the Elmwood plant as far as personal contact went, until—oh, after the war in 1946.

And Taylor, I had heard, when I came back to the Elmwood plant—I—well, I didn't come back to the Elmwood plant, I—they abolished the Elmwood plant. We went to the Niagara Falls plant, and all the feilities jcined in one plant, that was the Wheatfield division.

And I heard when I got back then, in the tool room, that Taylor had gone after I had left, some time—I don't recall the exact date. He had gone to Burlington, Vermont, and had taken a supervision job in the tool room.

Q. Burlington, or—

A. In Burlington.

[fol. 359] Commander Dunstan: That's all.

Chairman Waldman: Any questions?

(No response)

Chairman Waldman: You may be excused.

(Witness excused.)

Chairman Waldman: Mr. Siegler, will you have a seat over here, please. I think you have been a guest here before.

Mr. Siegler: I have.

Mr. Leone: For the record, it should be noted that Mr. Leone has furnished copies of the PSQ's to Mr. Lipsitz.

Chairman Waldman: Mr. Siegler, before you testify please be advised that Section 1001 of Title 18, United States Code, makes it a criminal offense, punishable by a maximum of five years' imprisonment, $10,000 fine, or both, to make a false statement or representation to an department or agency of the United States as to any matter within the jurisdiction of such department or agency.

Do you understand that?

Mr. Siegler: Yes.

Whereupon, ROBERT SIEGLER, called as a witness in behalf of the Respondent, was examined and testified as follows:

Chairman Waldman: Would you kindly give your full [fol. 360] name and residence address to the reporter.

The Witness: Robert Siegler, 799 Loretta.

Mr. Lipsitz: Is that Buffalo?

The Witness: No, that's the town of Tonawanda.

Direct examination.

By Mr. Lipsitz:

Q. You are employed at Bell Aircraft, Mr. Siegler?

A. Yes.

Q. Address your answers to the Board members.

And you have been employed there since when?

A. June 17, 1940.

Q. You have held a number of offices in the union, have you not?

A. Yes.

Q. Just give us a brief resume of the offices you have held.

A. Well, steward, chief steward, committeeman, president, chairman, bargaining committee, and top committee—top bargaining committee.

Q. Do you know Charles Taylor?

A. Yes.

Q. Do you know Allie Brodose?

A. Yes.

Q. Now, I call your attention to Exhibit 1, which I have placed in front of you; and I ask you if it is your name [fol. 361] which appears upon the rear side as a candidate for an office on that slate?

A. Yes.

Q. For which office was that?

A. Financial secretary.

Q. Do you recall the election in that year?

A. Yes.

Q. Had you previously run for election as a union officer?

A. No, never for any—

Q. You had been a steward before that; is that correct?

A. Steward, yes.

Q. In what department had you been a steward before you ran for election in 1943?

A. 37 department.

Q. What is that?

A. Well, it's hand-forming, sheet metal.

Q. Was that at the Elmwood Avenue plant?

A. Yes.

Q. Did you get to know Brodose at that time?

A. Yes.

Q. How did you get to know him?

A. Well, I'd been a ballplayer for the union, I was always playing ball. And I went to a ball game one night, and quite a few people from my department were there.

[fol. 362] And they were telling me after the ball game that they had a meeting, departmental meeting to elect a steward. Why don't I come over, have a few beers and that with the guys.

So I went over, and they tried to talk me into running for steward in the department. I didn't want to, but I finally did. That's how I got to be a steward.

And before that I—on the job I held at that time I was a clerk, I was departmental clerk, and everything was in code, as far as rates were—in the department were concerned. Nobody knew what one another was making, and it was like merit system, raises were on a merit-system basis.

I guess it will take a little detail to explain that. Anyway, I knew the code—nobody else knew it, I knew it, I was the clerk.

When I was elected steward I took it to heart, I figured they were—had confidence enough to elect me, and I tried to do the best I could, and I immediately went to work on the rates in the department, people making 10, 12, 15, 20 cents less, who were there longer, and so on.

And as a result I got the confidence of the people in my department.

In those days you had to collect the dues yourself, it was hard to collect dues, but after that happened to me, I—[fol. 363] the people in my department, most of them signed up at the union, they were all eligible to vote, and that's how I got to meet Brodose.

He came down to my department and told me I was doing a good job in the department, and so on, why don't I run for higher office, and so on.

Which I thought was an honor, to run for higher office. So I told him sure I would, and that's how I appeared on that slate.

Q. You say that's how you became a candidate on that slate; is that correct?

A. That's right.

Q. At the time you became a candidate on that slate, did you know or have any reason to believe that Brodose was a Communist or a follower of the Communists?

A. No, none whatsoever.

Q. How old were you at the time, incidentally?

A. Oh, I don't know. Let's see, about 24, 25.

Q. Had you ever been exposed to any—up until this time—any literature or any information about the Communist Party or the Socialist Party?

A. Nothing.

Q. Or any of the radical parties?

A. Nothing at all.

Q. Did there come a time when you heard, whether you [fol. 364] believed it or not, that Brodose was supposedly a Communist or a follower of Communists?

A. Well, what happened, after I appeared on this slate the literature started to hit the plant, you know, this—along this line here (referring to Exhibit 1.)—different literature from the other groups, and so on, in which they accused them of playing ball with the Communist Party, and so on.

They didn't come out and say he was a Communist, but they were—blew it up quite a bit on his record, and how he was acting the Communist line, and all kinds of stuff like that.

And when I got involved in something like that, I blew my stack. I remember the time when I went down to see Brodose, and I asked him point blank whether he was a Communist or not.

And he didn't say he was or he didn't say he wasn't.

And I told him at the time that he'd tell me one way or the other, I mean, either he was or he wasn't; if he was, I don't want no more part of it, because I was getting in trouble at home: my father and people, relatives, were involved. I worked in the plant—I had been a ballplayer. Everybody was coming to me, and I just felt like tossing the hat in—I was pretty well disgusted.

And I didn't run after that. I mean, I blew my cork, [fol. 365] and I just busted away from it, and that was it.

And after that I more or less patterned myself in the union along those lines, I always—first I tried to learn the score,—it took me quite a while, I mean, I didn't know a hell of a lot at that time about politics, or anything like that. But eventually I formed my own group, my own political group in the union, and at the time when that happened, Walter Reuther was—

Q. Well, we'll come to that in a minute.

A. Yes.

Q. But during 1943 you say that you recognized that there must be something wrong with Brodose and his associations; is that correct?

A. That's right.

Q. At that time did you know Charles Taylor?

A. Well, I knew who he was, I knew he was a steward in 40 Department. I had talked to him a few—on a few different occasions.

Q. Was there ever any charge or allegation that Charles Taylor was a Communist or a follower of the Communists?

A. Not that I ever heard of.

Q. And your breaking was based upon the charges that were made against Brodose, and his failure at least to deny them effectively to you; is that correct?

A. That's right.

[fol. 366] I mean, it was a big issue in the shop, everybody in the place was talking about it, and everybody that was on that slate was really given a workout.

Q. You started to say that there came a time when you formed or helped to form your own group; was that after the war?

A. Yes, it was after the war.

Q. Was it in connection with the prospective candidacy of Walter Reuther for president of the International Union?

A. It was.

Q. All right, when do you place that?

A. Well, it first happened in '46. The real issue was in '47.

Q. Yes?

A. And during the war it was hard to—to determine the Commies at that time, because they were our allies, it was —it was a rough deal on how you could determine the difference there.

And how you would act after the war was a different story. I mean, it was just like black and white after the war.

And I had my own caucus going at the time, where I followed Reuther's program, and his program was to clean out all the officers in the UAW who had played ball or carried the Communist Party line in the UAW leadership. [fol. 367] He was advocating throwing them all out, and so on, on the basis of the record that they had had.

And I formed a group at that time advocating that. I was at one convention in '47 where he called for the—to defeat all these guys that had played ball with them over the—over the years.

I ran—I ran delegates, I ran myself at the time, and we leafleted the plant along those bases—I mean, that we followed his line on the thing, that we were going to clean these guys out, that they played ball with the Communists, and so on. See?

Q. All right, now—

A. Now, at that time—

Q. Just a minute.

A. I'll get to that.

At that time Taylor, who hadn't been too—very active—I can remember before that, he'd been away in Burlington, and came back. And he very viciously came out and supported our stand at that time, to support our slate.

Now, our slate was definitely to defeat the people who had carried the line in the UAW, to wipe them right out of office.

I mean, he was campaigning very actively at that time for our—our line of reasoning.

Q. Did that pertain to officers of the International Union, [fol. 368] this campaign?

A. Yes.

Q. And by name who were they?

A. Addes.

Q. Who else?

A. Thomas. Mostly Addes. Well, Thomas, too, but mostly Addes.

Q. And you recall clearly that Taylor was—you said vicious would vigorous be a better choice of words?

A. All right, vigorous, vicious.

Q. He was a staunch supporter of your effort in this respect?

A. Very, very vehemently came out and—all over the plant, and supported our position.

Our opposition at the time didn't take either position, they were campaigning on the basis they were going down there with an open mind, and they stuck to that theory, an open mind, they are going to go down there and see, and so on.

Well, we came out definitely where we stood.

Q. Brodose had been out of the plant for some time?

A. Yes, he wasn't there then.

Mr. Lipsitz: Those are all the questions I have at this time.

Chairman Waldman: Mr. Leone?

[fol. 369] Cross examination.

By Mr. Leone:

Q. When you stated that you bolted from the Brodose group, do you mean that you withdrew from the slate?

A. Well, I didn't withdraw, the slate was there.

But I mean, I told everybody that I—that that was it so far as I was concerned.

Q. Why couldn't you withdraw?

A. Well, your slates were made up, the ballots were made up, you have a deadline. You see, you have either got to accept or decline on a certain deadline. After the deadline, then whoever is running, that's it.

Q. And—

A. And all the literature didn't come out in that time. In the interim between that period, between acceptances and declinations.

Q. Let's assume you had been elected; what would your position have been?

A. Oh, same position that I had—I had taken. As I said, I'd have—

Q. You wouldn't have served?

A. No, I—not with him, I wouldn't have served.

I don't know what the hell I would have done, if I would have been elected, but I certainly would not have been involved with him. That's for one—that's for sure.

Q. You must have given it some thought?

[fol. 370] A. Yes, I give it quite a bit of thought. Oh, yes, to me it was a foregone conclusion. I mean, everybody was concerned about it.

My whole department, I told them that I was through.

I went to Brodose, I asked him point blank. He wouldn't say he was, he wouldn't say he wouldn't—he just hemmed and hawed around the thing.

And in the meantime all these things were coming out, which I knew nothing about—I hadn't known nothing about Communism or nothing else before that.

Q. But did you tell the people not to vote for you?

A. I told them that I was through with the ticket, that so far as I was concerned it—that was it.

In fact I was ready to throw my button in as steward at the time. That's how disgusted I was with the thing.

Q. At that time did you have any discussions with Charles Taylor?

A. Taylor was at the time blowing his cork, too. I mean, I don't know what the—remember the issues about what he was blowing about. I know he was blowing his cork about—

Q. What do you base that on?

A. Well, about Brodose and his record. I don't—I just don't now the issues as they were—came out in these leaflets, but everybody was more or less blowing their cork about Brodose, and that he was a Communist, and that he was—

[fol. 371] Q. Well, can you give us—

A. Freezing wages at Bell; I remember one big leaflet came out, freezing wages at Bell.

Before that he was militant in the union, something about Russia and Germany being into a pact at the time, and he was militant—couldn't stop the guy.

And then the situation changed, and he took another—an altogether different viewpoint on things. He wasn't militant at all, he was backtracking, and everything, and along those lines.

Q. Yes, but what do you remember about Taylor's attitude; and give me something, whether it was based on discussions you had with him, whether it was based on anything you heard him say at any meetings; or—anything?

A. Well,—

Q. Anything specific that you can give the Board that leads you to form the concclusion that this attitude coincided with yours?

A. Well, I didn't attend any union meetings at the time. I didn't go to any union meetings at that time at all.

And the only thing is that I know is that he was arguing with Brodose.

Q. How do you know that?

A. Well, it was comon knowledge. I mean, a lot of people knew it. I mean, there wasn't anybody that was actually [fol. 372] with Brodose, that I could see.

Q. Now, that is not entirely true, is it?

A. Well, I mean, there wasn't actually—well, you can take this slate here (referring to Exhibit No. 1). Anybody that was on this slate—I don't remember too many of them.

Q. How about Alvin Taylor, was he with Brodose?

A. Well, Alvin Taylor, they asked me if I remember Alvin, all I remember is that he was—I mean, I never spoke to the guy. I mean, I don't know him, I don't know him too well.

I know he was a big guy. I know he was a guy about 55 years old; he worked in 51 Department. I mean, I don't know too much about him at all.

There are people there that I did know.

Q. How about Freda Werb, was she with Brodose?

A. Freda Werb was a steward in the assembly division, I think,—some place like that. I don't—she I never had too much conversation with at all either. I didn't know her at all—I mean, just to know her and see her, and know who she was.

But I do know definitely that at the time that we—'47—that we had this group going on the basis of defeating the top UAW officers, who had been carrying out the line of Commies, that Taylor was all out in it—in support of our position.

[fol. 373] A. Did you support Taylor during this particular campaign?

A. No, I don't—

Q. And the Unite and Win slate?

A. This slate here, you mean? (Referring to Exhibit No. 1.)

Q. Yes.

A. I didn't support anybody. I just—that was it. I went down, I had an argument with Brodose, and I just laid right down, and I didn't do nothing.

Q. Did you vote?

A. I don't even think I voted.

Mr. Leone: I have no further questions.

Chairman Waldman: Commander?

Commander Dunstan: No questions.

Chairman Waldman: Mr. Simms?

Mr. Simms: No questions.

Chairman Waldman: No questions.

Mr. Lipsitz: That's all.

I just want to take a few minutes.

Chairman Waldman: Surely; let's take a five-minute recess.

(Recess had.)

Chairman Waldman: Who is the next witness, Mr. Lipsitz?

[fol. 374] Mr. Lipsitz: Well, Mr. Taylor is the witness.

Chairman Waldman: Mr. Taylor, you have heard me read the provisions of Section—

Mr. Taylor: Yes, sir.

Chairman Waldman: —1001 of Title 18 to each of your witnesses. I think you must be familiar with it now. Do you understand?

Mr. Taylor: Yes, yes, sir.

Whereupon, CHARLES ALLEN TAYLOR, the Respondent, called as a witness in his own behalf, was examined and testified as follows:

Chairman Waldman: Please give the reporter your name and residence address.

The Witness: 269 Wheatfield Street, North Tonawanda, New York.

Chairman Waldman: Proceed, Mr. Lipsitz, please.

Direct examination.

By Mr. Lipsitz:

Q. Mr. Taylor, you have read the statement of reasons that have been issued against you, have you not?

A. Yes.

Q. And I show you a copy of the affidavit which you submitted in response to them, the original of which has been sent to the Board, and which I am sure is in your files [fol. 375] some place; is that not correct, Mr. Leone?

Mr. Leone: Yes.

Q. You signed such an answer; is that correct?

A. Yes, sir.

Q. And you reaffirm at the present time the contents of that answer?

A. I do.

Q. Have you ever been a member of the Communist Party?

A. Never.

Q. Did you ever pay any dues to the Communist Party?

A. Never.

Q. Did you ever pay any money that you know of that went to the Communist Party?

A. No.

Q. Did you ever hold a membership book or card in the Communist Party that you had any knowledge of?

A. No.

Q. I suppose if there were such a card, you can't deny its existence; is that correct?

A. (No response.)

Q. If there is a card around with your name on it, you are telling us that you don't know anything about it; is that correct?

A. That is correct.

Q. Did you ever authorize anybody to issue you a card [fol. 376] showing membership in the Communist Party?

A. Never.

Q. Did you ever belong to any branch of the Communist Party?

A. No.

Q. Were you ever actually solicited to become a member of the Communist Party?

A. No.

Q. The statement of reasons alleges that in 1941 and 1942, while residing in Buffalo, New York, or thereabouts, you signed independent nominating petitions for the Communist Party; in respect to that you were residing in Buffalo during those years, were you not?

A. Yes.

Q. Do you know what an independent nominating petition for the Communist Party is?

A. Well, it's the same—I believe it's the same as any other nomination petition.

Q. Can you state with certainty whether or not you ever signed such a petition for the Communist Party?

A. No.

Q. Is it your testimony, then, that you cannot deny with certainty that you signed one?

A. I cannot deny it.

Q. Can you affirm with certainty that you signed it? [fol. 377] A. That is correct.

Q. Is there a possibility that you may have signed one?

A. Yes.

Q. If you signed such a petition, do you know whether you did it knowing that it was a petition for the Communist Party, or not?

A. I would not know.

Q. Do you know whether or not you ever signed any nominating petition for public office, with certainty?

A. Yes, I have. I cannot recall when, but I have signed one. Not one—I have signed—I have signed quite a few, I believe.

Q. Can you recall for what party or political parties they were?

A. No, I don't.

Q. When you signed and submitted your personnel security questionnaire, the first one being dated September 8, 1954, the file copy of which has been supplied to us by Mr. Leone, in paragraph 26, where there appears the instruction, "organizational membership; list all organizations except labor unions in which you hold or have held membership," and there is typed in there "none;" was that a truthful answer?

A. To a point. I mean there is something I didn't think about at the time.

Q. All right?

[fol. 378] A. And I—I don't think it's important now. I did join the National Sheriffs' Association.

Q. Is that the only other organization that you can think of?

A. Yes, yes.

Q. What is the National Sheriffs' Association?

A. Oh, it's just a group of lawyers, judges, police force, sheriffs, and what-have-you that meet once in a while.

I moved out of the county. I was in the hospital several times, and I just dropped out. I didn't bother any more.

Q. In respect to membership in the Communist Party, or any of its affiliates, is it a truthful answer that there were none?

A. That is a truthful answer.

Q. Referring now to the Personnel Security Questionnaire attachment, entitled "Certificate of Non-Affiliation with Certain Organizations," dated July 2, 1956, the file copy of which Mr. Leone has also supplied us, are the answers to questions 1 through 6 on such form truthful answers?

A. Yes.

Q. And in respect to Section 26, "Organizational Membership," on the actual Personnel Security Questionnaire, to which the other certificate was an attachment, where you have "none," do you give the same answer there?

[fol. 379] A. Yes.

Q. As to the 1954 one?

A. Yes.

Q. And it is truthful, except that you—

A. Yes.

Q. —had joined the National Sheriffs' Association?

A. Yes.

Q. Did you intentionally omit the Sheriffs' Association?

A. No, no, I did not.

Q. Is it something you have thought of since you have been involved in this?

A. That's true, that's right.

Q. Now, in the statement of reasons it is also charged that you have a sympathetic interest in Communism; have you ever read any publications in which the doctrines of Communism were the subject of such publications, so that you knew you were being subjected to education about such things?

A. Such as—

Q. Any books or magazines or periodicals, or anything like that?

A. No, never.

Q. None that you knew—

A. No.

Q. Did you in 1942, 1941 and 1943, know what the theories of Communism were, in respect to—

[fol. 380] A. No.

Q. Wait a minute. —in respect to their economic theories?

A. (No response.)

Q. Do you want to answer that?

A. I possibly had heard a few things about—

Q. All right, fine.

A. —socialization. I don't—

Q. All right, in those days you had some glimmering, then, about what Communism was about as an economic system?

A. Very little.

Q. All right, did you have any understanding or knowledge about what it was as a governmental system?

A. No.

Q. The kind of government that Communism apparently adopted wherever it was?

A. No.

Q. Is it a truthful statement, then, that you had a sympathetic interest in Communism at any time?

A. That is an untrue statement.

Q. Do you state now, then, that you have never had a sympathetic interest in Communism?

A. I do.

Q. Do you know more about what Communism is today than you did back in 1941, 1942 and 1943?

[fol. 381] A. Oh, yes.

Q. Do you at the present time have any sympathetic interest in Communism?

A. Definitely no.

Q. At what point would you put it that you began to know and learn more about Communism, when would that be?

A. I have never learned too much about Communism.

Q. Well, you state—

A. I have never been interested enough to know, but the local papers, the talk around the union, the—the policies of someone who has been branded a Communist, and the way he—he leads policies and principles in labor, I didn't want any part of it.

Q. No, answer my question, if you will. You stated that back in 1941, 1942, and 1943, you didn't know too much about Communism; is that correct?

A. That's correct.

Q. And that you have since learned or heard about Communism?

A. Yes.

Q. And that you have at the present time no sympathetic interest in Communism?

A. That's correct.

Q. Now, when was it that you began and learn more about what Communism was supposed to be about?

[fol. 382] A. Oh, I'd say '43, '44, '45—around in there.

Q. Did there come a time when you were employed at Bell Aircraft in 1943 that Communism or the leadership of a person in the labor union alleged to be a Communist, became an issue in the local union?

A. Yes.

Q. All right, tell us who was the person that was involved?

A. Allie Brodose.

Q. Did you know that person?

A. I sure did. Yes.

Q. How did you first get to know him?

A. By him coming to my department, talking union to me, talking grievances, talking leadership.

Q. When would you first place that?

A. '41.

No, I'd—I'll withdraw that. I believe it must have been '42.

Q. Well, early, middle, late part of 1942?

A. Most likely very early in '42—well, I'm trying to recall.

Q. You recall as well as you can.

A. '41—'41.

Q. All right, what part of 1941?

A. Right around November,—approximate.

[fol. 383] Q. Had you been working in Bell for any particular time at that point?

A. I started at Bell in February 1941.

Q. Now, did Brodose seek you out, or did you seek him out?

A. Brodose sought me out.

Q. And you say he talked to you about the union, and leadership in the union, and things like that, or what?

A. Well, when he first come to me, if I remember correctly—and I think I do—I think he used to talk to me about the different stands I'd taken on the union floor, different stands that had I taken on grievances in my department, where I was a steward. And commended me on these things, and wanted me to run for higher office, and —in fact, it was through him—I was elected to be a committeeman, it was through him—and I can't recall exactly how—I was a committeeman.

Q. You mean it is your recollection you were appointed or selected by somebody?

A. Yes. Yes, it was through him, but not entirely, because he was not the president at that time. But I believe he had a lot to do with it. I can't—I can't be sure.

Q. Well, in any event, you place your association with him, or your acquaintance with him from the latter part of 1941; is that correct?

A. Yes, yes.

[fol. 384] Q. All right, now, did you know him socially; that is, outside of the plant, from that point on?

A. I have met Allie Brodose in here, there, some place, maybe met him some place and had a beer with him. Socially, and him in his home, and him in my home, I don't know him socially.

Q. Well, had he been to your home?

A. He had been to my home, yes.

Q. Well, now, you say you don't know him socially; what brought him to your home?

A. He come up there to visit, talk.

Q. Talk about what?

A. Union.

Q. Can you tell us approximately the number of times he had ever been at your home?

A. Maybe three, maybe two.

Q. During all of the period of your acquaintance with him; is that what you are stating?

A. That's right.

Q. And you say you have been at his home?

A. Once.

Q. What brought you to his home on that occasion?

A. I was down to the union office. He was—he didn't have any car. I drove him home, and from there we went downtown to the international office. I don't recall what it [fol. 385] was—but that's where we went.

Q. When you say you drove him home, did you go into his home at the time?

A. Yes, yes.

Q. Did you stay for long?

A. No.

Q. Did you ever meet him at anybody else's home?

A. No.

Q. And you stated, I believe, before that you had a beer or a drink with him?

A. Yes.

Q. In places?

A. Yes.

Q. In what connection is this?

A. No connection. Maybe next door to the union hall on Elmwood Avenue, where we had our union hall.

Q. Was the union office on Elmwood Avenue part of this time?

A. Yes, at that time it was on Elmwood Avenue.

Q. Was that before or after it was in the Root Building on Chippewa Street?

A. I don't believe it was ever in the Root Building on Chippewa Street. Not the union hall.

Q. Was there a union office there?

A. The international had their office there, and we used [fol. 386] to meet down there sometimes in the international office, executive board meetings and—

Q. But the local union also had its own office on Elmwood; is that correct?

A. Yes.

Q. Did there come a time when Brodose talked to you about running on a slate for a particular union office?

A. Yes.

Q. When was that? Do you know?

A. Well, when he first talked about it was when he first talked to me about union.

Q. All right, did there come a time when you assented or agreed to being placed on a slate?

A. Yes, I think '42.

Q. Is it your testimony that in 1942 you agreed to be on the slate to run for office in 1943?

A. Yes.

Q. And that's the office that is the subject of the exhibits here?

A. Yes.

Q. The exhibits marked 1, 2 and 3, I believe; is that correct?

A. Yes, yes.

Q. Where your name appears?

A. Yes.

Q. When you associated yourself with that slate, did you [fol. 387] know that Brodose was a Communist?

A. Yes.

Q. Had it been hinted around, or had there been rumors around that he was supposed to be a Communist, or a follower of the Communists?

A. Yes.

Q. Did you have reason to believe it at the time?

A. No.

Q. You saw your name appear on literature during that period as a member of that slate; is that correct?

A. Yes.

Q. Did there come a time that charges were openly made by the opposition that Brodose was a Communist?

A. Yes.

Q. Was that before your name appeared on these papers, during the time, or when would you associate it?

A. After.

Q. What did you do at that point, if anything?

A. Well, I nailed him with questions—

Q. Wait, who is him that you are nailing?

A. Allie Brodose. With the question. He denied it.

Q. What did you ask him?

A. I asked him—I asked him if he was a Communist, if he belonged to the Communist Party. He denied it, point-blank he denied it.

[fol. 388] Q. Well, then what did you do?

A. Well, I was a pretty bewildered person. I can't recall exactly what I done, but I—I know I fought him on all—on most all issues on the union floor previous to this.

Q. Well, I will come back to that in a minute, but let's direct ourselves at this point to your association with him on this slate in 1943; did you do anything more after you stated you became bewildered?

A. I think I—I think I let it ride on the slate for that—go along on the ticket. I felt that it didn't make any difference who was on the ticket, or if he was or if he wasn't on the ticket. I—if I went into office, I'd have a better job of doing a job on him there, than I would if I wasn't there.

Q. All right, now, before this time had you and Brodose engaged in any differences of opinion over union policies or programs?

A. All the time.

Q. Well, tell us as much as you can remember specifically about such events or occurrences?

A. I can't recall any events exactly, or exactly what the issues were. I—I know I fought with him very hard on the issue of incentive pay, the giving up of—

Q. Well, now, let's address ourselves to incentive pay. Did Brodose speak in favor of incentive-pay plans?

[fol. 389] A. Oh, yes.

Q. Was this a constant thing with him, or what?

A. Oh, yes, yes.

Q. What was your position about such things?

A. I don't believe in it in any way, shape or form.

Q. Well, this was your position then?

A. That was my position then.

Q. And I assume it is your position now; is that right?

A. That's right.

Q. And you haven't changed in that—right?

A. No.

Q. Did Brodose try to persuade you to his point of view about it several times?

A. Yes.

Q. Did you ever in the presence of other members of the union dispute with Brodose over this subject?

A. Yes, on the union floor.

Q. At union meetings?

A. Yes.

Q. How about any other issue—you started to mention something else.

A. No-strike pledge.

Q. All right, what was Brodose's position about that?

A. No-strike pledge was in—he was in favor of this no-strike pledge, just the way they had it built up, with no [fol. 390] restrictions whatsoever.

Q. You mean with no exceptions to it?

A. Exceptions to it, right.

Q. What was your position with respect to this?

A. Well, I wanted a no-strike pledge. I didn't want anybody to be strike-happy.

But I didn't want to tie myself down, that if the corporation took advantage of us because of a no-strike pledge, that we had no—no way to turn.

Q. Was it—

A. I felt in my mind that the company was more apt to sit up and listen if they knew we could strike, and I was—I think I was just as patriotic as any other man in not wanting a strike.

Q. Well, did you oppose Brodose in this publicly?

A. I did.

Q. You state you can't recall the exact time and place, but would there have been a union meeting where this became an issue?

A. Yes.

Q. You opposed him publicly at such time or times?

A. Yes.

There was another meeting that was called by certain representatives—I can't recall the exact date.

Q. Do you place it in this same period?

[fol. 391] A. Yes, right around the same period. It was called, and I can't remember the building, but I believe it was somewhere down where they used to hold the—what do you call it?

Q. The Memorial Auditorium?

A. No; where the delegates from all over used to meet. What do you call it?

Q. CIO Council?

A. CIO Council. It was the hall where they all used to meet.

And he was at that meeting—in fact all the more or less interested people in the union was at the meeting. They brought up the question at that meeting of the giving up of double time, and the no-strike pledge, I believe, was brought up at that time, too.

I spoke against the—against both of them.

Q. Well—

A. I was willing to go down the line with a modified no-strike pledge.

Q. But not the way Brodose proposed it; is that correct?

A. Not the way they—no.

Q. Did you ever go up into the Root Building on Chippewa Street?

A. Yes.

Q. Where the International Union had its offices?

[fol. 392] A. Yes, many times.

Q. Were you aware of the fact that there was an office across the street which was the headquarters of the Communist Party?

A. I think I learned that there was around the latter part of '42, about '43, yes.

Q. Did you ever go to those headquarters?

A. No, I've never been in there. I have never been to a Communist meeting.

Q. You were here when you heard Leon Meyers-Marzinsky testify?

A. Yes.

Q. Do you recall his testimony about the incident on Delaware and Chippewa Street, near the Root Building, on one Sunday morning?

A. Yes.

Q. Is that the way it happened, or how—what is your recollection of that?

A. No, it happened just—just the way he put it. That's the way it was.

Q. Did you make a remark about Brodose?

A. I made a remark—I think I asked him what he was talking to that Communist for, something on that order. I

didn't know that he was a Communist, but I just—I was looking for information, as much as anything. I was trying [fol. 393] to find out if he was, and if he was, who was with him, and who wasn't.

Q. Was this around the time where you were a little bit confused about things, you say?

A. I was very confused, yes.

Q. Now, do you recall that there was a second election during 1943?

A. Yes.

Q. Did you run in that second election?

A. Yes.

Q. And how did you happen to run in that second election?

A. I was put on the ballot, without my permission.

I done everything that I could do for to be taken off the ballot, to have just my name stamped out, even, if they would; but it was just like trying to put my head through a brick wall—couldn't be done.

Q. Did you speak to people about voting for you?

A. Yes, I asked people not to vote for me. I didn't even want to be an officer.

Q. Did you remain a steward or committeeman after that election?

A. I don't recall if I remained a committeeman. If I wasn't, I was a steward.

Mr. Leone: May I ask for a word of clarification, please. [fol. 394] Mr. Lipsitz: Yes.

Mr. Leone: Are you speaking of the election which took place in the spring now, Unite and Win, or are you speaking of the subsequent election, the delegates—

Mr. Lipsitz: The delegates, no. I'm talking about the second election for local union office. The first one, as you recall, the testimony is that it was set aside, and the International Union came in and conducted a second election.

Mr. Leone: I see.

Mr. Lipsitz: That's the second election that I'm talking about.

Mr. Leone: Thank you.

By Mr. Lipsitz:

Q. Now, there did come a time in 1943, however, when you ran as a delegate to the International Union convention in Buffalo, New York; is that not correct?

A. Yes.

Q. I show you Exhibit No. 4, and ask you if you are the Charles Taylor whose name appears on it?

A. Yes.

Q. Does that 1 opposite your name mean anything?

A. Well, I—I drew the highest number of votes, I believe.

Q. Can you recall the program on which you ran?

[fol. 395] A. Not exactly, no.

Q. Well, do you see the rear side of it; does that refresh your recollection?

A. I know I—I—oh, yes, on the—yes. Well, I remember.

Q. Well, let's answer the question—you recall the program?

A. Well, I'm going to answer that, I mean. My associations with this—I mean, there were things come up in the—

Q. We will come to that. You recall the program in which you ran; is that right?

A. Yes, I do.

Q. Now, was the program that you ran on as a delegate to the UAW convention, as shown by Exhibit 4, a program that the Communists or the followers of the Communists in the local supported or opposed?

A. Opposed.

Q. The things on the rear of this card under the heading, "We oppose" are some of those things that the Communist Party stood for, are they; and if so, which ones?

A. Piece work, an increase in union dues, Smith-Connolly Act.

Q. Do you recall any of the events of that convention?

A. Yes.

[fol. 396] Q. Did you participate by making any statements or engaging in any debate?

A. Well, the—I—when the no-strike pledge, I believe it was, come up, I voted against the no-strike pledge, the way it was wrote up.

Q. Did you speak out on the subject?

A. No.

Q. Or you just voted; is that correct?

A. Yes, I voted.

Q. Did you have reasons to vote against it the way it was proposed?

A. Yes.

Q. Were those the same reasons you told us about earlier?

A. Yes. The—it's a long time ago, it's hard to remember.

Q. All right, now—

A. The delegates I—

Q. Now, wait, I will ask the questions.

Do you recall if there was ever any charge leveled against you as an individual that you were a member of the Communist Party, during these times?

A. I can't remember of any certain person, of anybody even accusing me of belonging to the Communist Party.

Q. Do you recall any event within the last year or so when you were working in the plant where two of the em- [fol. 397] ployees had a conversation with you about Communists or being a Communist?

A. I sure do.

Q. Do you know who those two employees were?

A. Frank Krantz and Dick Rebulski—I can't spell it.

Q. Do they have nicknames, those two fellows?

A. Yes, but I can't put my tongue on it right away.

Q. Well, do you recall Mr. McGovern testified about them?

A. Yes, yes.

Q. He said they were called Cohn and Schine by everybody?

A. Yes, that's the nickname.

Q. Was that the nickname?

A. Yes.

Q. All right, what happened at that time?

A. Well, they had been over to McGovern, talking—

Q. No, you tell us what you know, what they said.

A. Oh, they come over and told me that McGovern accused me of being a Communist. That's what they accused me of.

Q. What did you say to them?

A. And I said, "I have been accused blankly different times of doing a lot of things, but," I says, "not a Communist." I says, "I think McGovern knows that I am not a Communist."

So they wanted me to do—to make a fight about it, to do something about it.

[fol. 398] I wanted to—I wanted to make a fight on the issue. So I talked it over with a couple of boys in the union, and they says, "It wouldn't do any good to make a fight; what good would it do? You wouldn't get anywhere with it anyway."

Which I think is quite true. And I have good reason to back that up.

Q. Well, have you told us the substance of the conversation you had with these two fellows about your being—

A. Yes.

They wanted me to make a fight.

Q. Did they want you to do something publicly to deny this; is that what you are saying, by making a fight, or—

A. Well, something on that order.

They were a couple of—they are just a couple of troublemakers, that's all they are.

Q. Up to that time do you know of any incident where you have been accused of being a Communist by anybody?

A. No, never.

Q. The statement of reasons goes on to state that: "The information before this Board furnishes reason to believe that you may be subject to coercion, influence or pressure which may cause you to act contrary to the best interests of the national security."

Now, going back to the years 1941, 1942, and 1943, do you recall any effort ever having been made by Brodose or [fol. 399] anyone else in respect to classified information or—well, for instance, in respect to getting information with respect to classified information?

A. I've never had anything like that happen to me in my life.

Q. Nobody has ever talked to you about giving them any information?

A. They wouldn't want to.

Q. Well, I'm not asking you whether they would or not, I am asking you whether anybody ever has?

A. No, never.

Q. Is it your statement that you were not a stooge for Brodose at any time?

A. I've never been a stooge for anyone.

Q. When you took a position against the stringent or strict no-strike pledge, did you do that with any ulterior purpose, or only for the purpose of preserving the right of your people to strike if they felt it was absolutely necessary?

A. That is right.

Q. Did any other group or organization come to you and say, "We would like you to help support us in our opposition to the no-strike pledge"—any political group of any kind?

A. No, no.

Q. Do you know of anyone who could influence you or pressure you or blackmail you into acting contrary to the best interests of the security of our government?

[fol. 400] A. There are no one—there is no one.

Q. Has there ever been anyone that you know that could do that?

A. No.

Mr. Lipsitz: I think those are all the questions I have at this time.

Chairman Waldman: Mr. Leone.

Cross examination.

By Mr. Leone:

Q. At the time that your name appeared on the Unite and Win slate, in the spring of 1943, what attempt if any did you make to have your name removed from the slate?

A. I didn't make any attempt to have my name removed on the first election.

Q. Did you ask for support on that slate?

A. No.

Q. From other employees in the plant?

A. No.

Q. Well, what was your attitude; did you discourage support?

A. I don't—on that first election I can't recall, but I was—but my heart wasn't in it. I didn't go out to do a job. I lost interest.

There was too much mudslinging, too much name-calling, and stuff that I couldn't prove, I didn't know. And I just [fol. 401] lost heart in it.

Q. Was this name-calling applicable to you, too?

A. No.

Q. No?

A. No.

Q. Was the specific issue during this particular election one which involved Communism?

A. It turned out to be that way; it didn't start out to be that.

Q. But it finally resolved itself into—

A. That's what--

Q. —that issue?

A. That's what happened.

Q. And can you tell the Board just what your position was regarding that issue at that time?

A. Communism?

Q. Yes.

A. I would always fight Communism, wherever I knew it existed. However, if you don't know it, you can't fight it.

Q. Did you ever make this—

A. I think you can understand, if you work with somebody along union lines for a certain length of time, even though you have agreed and disagreed with him many times, that there comes a time when you are working with [fol. 402] him, and somebody's trying to brand him, that you would be the one—the last one to hear about a lot of things.

Which I think I was, I was pretty close to Brodose in union affairs; even though I disagreed with him, I was still close with him. He was always talking union, always trying to get me to go along on this thing or that thing, and I had disagreements with him.

I think the only thing Allie Brodose saw in me was that I could fight a grievance, and that I would win a point, and —did I answer your question?

Q. No, you didn't.

But did you ever make your position known in any meeting or any discussions with any individuals?

A. About Communism?

Q. Yes.

A. I can't recall of the name Communism ever coming up at a meeting at that time.

Q. Did you ever have any discussions with Brodose regarding Communism?

A. No.

Q. Well, you had one discussion where you asked him whether he was a Communist?

A. Yes. Yes, I had more than once of that.

Q. Well, did you ever have any discussions with him regarding Communism?

[fol. 403] A. No.

Q. What I mean is, did you ever make known to him your ideas about Communists?

A. I don't think I did. I didn't have any ideas of Communism.

Q. Why would you ask him if he was a Communist, if it—

A. Well, there is—

Q. —didn't have any implication to you?

A. Well, there is one thing I knew about Communism: I knew they had no religion; I knew that they didn't have any rights like we have; they didn't have a democracy like we got. I don't know even yet a lot of things about Communism.

Q. Well, going back to that period of time, did you know enough about Communism to know that you didn't want to be branded as one?

A. Yes.

Q. You knew that much about it?

A. Yes.

Q. But you didn't know why—

A. That's about—

Q. —it was bad to be branded a Communist?

A. That's just about the truth of it.

Q. Is that your position?

A. Yes, that's just about the truth.

Q. Was Brodose in the habit of passing our applications [fol. 404] or forms for signatures, of the various types?

A. I can't remember of him ever passing out one.

Q. Or can you remember his being responsible for anyone disseminating—

A. Not that I know—

Q. —forms or petitions?

A. Not that I know of.

Q. That is a common practice, though, is it not, amongst the union members, to have petitions, forms, and have them signed?

A. You are talking political?

Q. Any kind; isn't that a practice?

A. Yes.

Q. Well, during this period it is possible, is it not, that forms of various types including petitions, were presented to you and other members for their signature?

A. There may have been.

Q. But you don't recall specifically?

A. No.

Q. You don't recall whether that ever happened?

A. No.

Q. I wonder if you would just give us whatever details you recall regarding your conversation with Brodose, and specifically with reference to your question regarding whether he was a Communist—just everything you remember about that particular conversation?

[fol. 405] A. Well, I can—I can remember one statement he made about Communism. At the time I didn't get any significance—significance out of it.

Something about a Communist being a—being a—some big person with a big black hood, and a gun under it. I don't remember exactly if that is the way he put it or not, but I think—I argued with him at the time that that's—"That's not the question that I asked you. I asked you, are you or are you not a Communist?"

And he said No, that he wasn't a Communist.

But he says, "There is nothing wrong with Communism."

He says, "You can look at your papers," he says, "you can see if the—in the plant," he says.

Why, he even mentioned one time about Stalin's picture being hung up in the office—you know, stuff like this.

Well, you know—why he didn't—he said that—he said that, "Communism," he said, "is on the same side as democracy today." He said, "They are all fighting together in one big fight." And oh, different things of that nature.

I mean, the—the windup of it was that I considered him to be a Communist, and that was—that was that. Even though he wouldn't admit it, I knew—I knew he was.

[fol. 406] He was trying to put it on the grounds that "We are out here to win this war, and because I do these things, the same things that our American government does, they brand me as being a Communist and because that's the same thing that the Communists are doing."

Do you follow me? I mean, them are conversations like I have had with Brodose. For politics—

Q. And this was—

A. For politics or government, I have never discussed it.

Q. And this conversation, or these conversations, how many were there?

A. Oh, not very many. Not very many—very few.

My associations with Brodose was usually on policies and issues, and part of them I'd go along with, part of them I would oppose.

I always went along with something I thought was right, and my—I never worried about who went with me, or who didn't.

In fact, there's been times when I stood all alone—felt like I was standing all alone.

Q. I'd like to go over some names with you, and ask you what if anything you know about these individuals. Peter Grant.

A. I don't know him.

[fol. 407] Q. And had you ever heard the name before?

A. Not before you mentioned it.

Mr. Lipsitz: Just a minute; before he mentioned it today, or last week at the hearing?

The Witness: Well, before he mentioned it period. I—

By Mr. Leone:

Q. Frank Herron?
A. No.
Q. Charles Doyle?
A. Yes.
Q. What do you know about Charles Doyle?
A. I know he was a big leader in the union. I don't recall, I believe it was the steel workers.

I don't know him personally. I wouldn't know him if he stood before me.

Q. Do you know whether you have ever met him?
A. No, I never met him.
Q. You know that you have never him?
A. I know that I have never met him.
Q. And that's all you know about him?
A. That's all.
Q. Do you know about his political beliefs?
A. Well, only what I have read, yes. I know about his political beliefs: he is a Communist.

[fol. 408] Q. Do you associate him with anyone you knew?
A. Now or then?
Q. Then.
A. Well, at that time I don't think I even knew that he was a Communist. No, I didn't. And—

Mr. Lipsitz: You are talking about then, meaning when, 1941, 1942 and 1943?

Q. Yes, during that period.
A. No, I didn't.
Q. Vincent Fantauzzo?
A. No, I never heard of him.

Mr. Lipsitz: Is this the same name that you gave us before, Mr. Leone?

Mr. Leone: F-a-n-t-a-u-z-z-o.

By Mr. Leone:

Q. Anton Sustar?
A. Yes, I—I believe that's the man that worked in 43 department. I think he was one man that was a known Communist.

Q. Do you remember having any discussions with him about Communism?

A. I have never spoke to him in my life.

Q. He was not in your department?

A. I passed him every day.

Q. Was he in your department?

[fol. 409] A. No, but I passed him every day: I had to go on past him to get to my department.

Q. But you never talked with him?

A. Never talked with him in my life.

Q. Do you know anything about whether or not he ever got copies of the Daily Worker into the plant?

A. If he did, I never saw one.

Q. Did you ever see a copy of the Daily Worker in the plant?

A. No.

Q. Did you ever see a copy of the Daily Worker?

A. Yes, I've read it.

Q. Where?

A. I picked one up on the newsstand downtown.

Q. When?

A. Oh, I don't remember when—back in '42 or '43, somewhere in there.

Q. How often did that happen?

A. Once.

Q. Only once?

A. That's all.

Q. And that is the only time you have seen a copy of the Daily Worker?

A. That's the only time I've seen a copy of the Daily Worker.

[fol. 410] Mr. Lipsitz: Just so there is no inference, did you pick it up or did you pay for it?

The Witness: I paid for it.

By Mr. Leone:

Q. Clara Lester?

A. Don't know her.

Q. Did you ever hear the name?

A. No, not until you brought it up.

Q. Never heard of it?

A. No.

Q. Were you ever a member of the bargaining committee of Local 501?

A. Yes.

Q. Local 501, UAW-CIO?

A. Yes.

Q. When were you a member of that committee?

A. (No response.)

Q. What period of time?

A. '42, I believe. Like I say, I can't recall exact, but I have no information to go back to or to recall it—or to refresh my memory.

Yes, I think I was a committeeman in '41.

Mr. Lipsitz: Just a minute.

The question was, were you a member of the bargaining committee?

[fol. 411] The Witness: Do I remember the bargaining committee?

Mr. Lipsitz: Were you a member of the bargaining committee?

The Witness: That's what I thought: yes, I was.

I was not elected to the job.

By Mr. Leone:

Q. Do you ever remember having discussions with representatives of a government agency regarding whether or not you were a Communist?

A. No.

Q. No one that you ever knew to be a representative of the government ever asked you whether or not you were a Communist?

A. No, no.

Do you mean a government official, like? Not that I know of, not that I can recall.

Q. Does the name James Connor mean anything to you?

A. I can't be sure. If it is Jim Connor or Jim Connors, I knew a Connor or Connors—I can't recall which it was. One or the other I did know, yes.

Q. What do you recall about this one you do recall?

A. Well, he was a steward, I believe, in Local 501. I met him, talked with him. I believe the time Allie Brodose come to my house, at one time I believe he was with him. [fol. 412] Q. And what—

A. And—

Q. Yes, go ahead.

A. Pardon?

Q. What was the reason for the visit to your home?

A. Just to talk over things in the union.

Q. Do you remember his reputation as a Communist?

A. No, I never knew him to have that.

Q. Did you ever hear of the organization Niagara Frontier Committee?

A. Not that I can remember.

Q. Have you ever been to Communist Party headquarters?

A. No.

Q. Have you ever been to any location where individuals you knew or have reason to believe were Communists met?

A. No.

Q. Any place of meeting at any location?

A. No.

Q. Does the name Svea Kate mean anything to you, S-v-e-a?

A. No, it don't.

Q. K-a-t-e?

A. No, it don't.

Q. During this period—and I am referring to the period 1941, 1942 and 1943—did you correspond with any indi- [fol. 413] viduals, write letters—did you write letters to any individuals?

A. Not that I can recall.

Q. None?

A. None that I can recall.

Q. Does the name Sam Wiseman mean anything to you?

A. No.

Q. W-i-s-e-m-a-n?

A. I take it that you are speaking of '41, '42, '43?

Q. Yes.

A. I understand that he is today a—I heard or I have been told. I had never heard of him at that time.

Q. You had never heard of him prior to, say, 1943?

A. No.

Q. Was there at one time, to your recollection, an issue on the union floor regarding the Lewis strike policy?

A. The which?

Q. Lewis strike policy.

A. The Lewis strike policy?

Q. Yes.

A. Can't recall it.

Q. At one time was Lewis in favor of—

A. Oh, Lewis was the—Mine Workers?

Q. Yes.

A. Oh, yes, that's right, there was.

[fol. 414] Q. There was—

A. I couldn't—yes, there was.

Q. You remember that coming up on the floor of the union?

A. Yes, yes.

Q. Do you recall whether or not you participated in that discussion?

A. Yes, I did. But I can't recall the discussion.

Q. But you do recall participating?

A. Yes, yes.

Q. Do you recall speaking on the floor—

A. I believe I did.

Q. Do you recall what your position was?

A. I don't remember the incident—I don't remember the issues. I—

Q. Well, I imagine the issue would be pretty much the issue of that which we have been discussing here time and time again, as to whether or not for a good cause at that time the men should be permitted to strike.

Mr. Lipsitz: Just a minute, Mr. Leone. Is that the question, or is this your attempt to help explain to him what you think the issue of the Lewis strike was?

Mr. Leone: I am trying to give him what my impression would be of the Lewis strike policy.

Mr. Lipsitz: So this doesn't call for an answer from [fol. 415] him at the present time—right?

Mr. Leone: No.

By Mr. Leone:

Q. But I am just asking whether that would help refresh his recollection as to what position he may have taken?

A. Well, I couldn't give you an honest answer.

Q. Do you ever recall having an opinion regarding, say, the attitude—your attitude—toward the miners?

A. My attitude has been always with me—with—

Mr. Lipsitz: Well, wait a minute. Have you finished your question, or is this still the question?

Q. Well, the miners and their right to strike.

A. Well, I think that everybody should have the right to strike, if the conditions warrant it.

Q. Then if at that time Lewis' strike policy was such that if for a good cause the men should go out on strike, you would be in favor of it?

A. I would have to study up on the issues concerned, the year, the time. And I can't even recall the year,—for to know I'd have to read up on that again, for to know, for me to give you my answer.

Q. Going back to this particular occasion, do you recall whether or not there was any discussion regarding Murray?

A. No, I can't recall.

Philip Murray?

[fol. 416] Q. Philip Murray.

A. I can't recall.

Q. You don't recall?

A. No.

Q. Do you recall—

Mr. Lipsitz: Excuse me, but your answer is you don't deny recalling Philip Murray—

The Witness: Oh, I recall Philip Murray, yes.

By Mr. Leone:

Q. No, my question was whether he recalled the name of Murray being mentioned at this particular meeting?

A. I don't recall.

Q. You don't recall?

A. No.

Q. Do you happen to know what Murray's view was regarding strikes at that time?

A. I can't—I can't answer that.

Q. You don't know?

A. No.

Chairman Waldman: Let's adjourn at this time for lunch. We will return at one o'clock.

(Lunch recess had.)

[fol. 417] AFTERNOON SESSION

Whereupon, CHARLES ALLEN TAYLOR, resumed the stand, and testified further as follows:

Chairman Waldman: Mr. Leone.

Cross examination (Continued).

By Mr. Leone:

Q. Going back to the period 1941 to 1943, do you recall Murray's policy regarding prices, Philip Murray's policy regarding prices, whether or not prices should be frozen, or whether they should be allowed to increase, and so forth —do you recall anything about it?

A. I—I can't be honest and answer that. I believe he wanted prices frozen. I can't be sure.

It seems to me that he was in with some of the rest of them, kind of a—I can't recall what they call it, but anyway the employer could only make what was it, $25,000 a year, or something like that? Wages be frozen where they were, or something of that order.

Q. Do you recall, Mr. Taylor, your own idea about prices, whether or not during that period prices should be frozen, and so forth?

A. I didn't mind prices being frozen, if they would bring wages up for to meet the prices. I felt like as though that prices, the products that we had to buy and live on to survive on, was away below the amount of wages that we were [fol. 418] getting.

Q. I don't know as I follow too clearly. I wonder if you would mind restating it.

A. Well, the money that we made was not enough to give us proper living. If they was to freeze prices and wages at that same level then, because prices had rose much more than—much more than the wages had risen, I think we would have taken an awful licking.

Q. In other words, you would have been in favor of a rollback in prices—in other words, decrease in prices?

A. If they would roll back the prices and keep the wages where they belong, yes, I would.

Q. Would that, as you recall, be your particular opinion?

A. Yes, I would have went for that. I'm sure I would. Like I say, it's a long time back, and I don't recall just the incident. I can't—

Q. What I would like to know, though, is whether or not you recall that as being something that you—

A. I—

Q. —personally were in favor of?

A. I can't be—I can't give you an exact answer. I'm quite certain that I am—

Q. You see, I am—

A. I couldn't swear to it.

Q. I am not too much interested in what your opinion is [fol. 419] now.

A. I'm trying to give you the opinion that I think I would have thought at that time. I'm not trying to give you the opinion that I have got now.

Q. During this same period did you ever go through a physical or nervous strain; did you go through a period when you were under a physical or nervous strain?

A. (No response.)

Q. You will have to answer for the reporter.

A. It wasn't—it wasn't a nervous strain. I had a—I had a strained testicle. I mean, if that's what you want to talk about.

Chairman Waldman: I don't think you mean that.

Mr. Leone: No.

The Witness: I was in the hospital a couple of days, or so, with that—couple of weeks, I guess.

Well, I don't know what you—

By Mr. Leone:

Q. Had you been suffering with this condition for a long period?

A. No.

Q. About how long?

A. Oh, it was just something that happened, maybe a matter of days, and I went to the doctor. And the doctor told me to go to the hospital. And I went to the hospital, [fol. 420] and it didn't require an operation.

Q. Had it been over more than a couple of weeks, though?

A. I don't think so.

Q. From beginning to end?

A. Oh, I'm not sure, it might have been a month. I can't recall exactly.

It wasn't very long.

Q. Did you have any other physical ailments?

A. At that time?

Q. Yes.

A. No.

Q. Do you recall being under any nervous strain?

A. I had—I had a lot of—

Mr. Lipsitz: Was that question answered?

The Witness: I had a lot of nervous strains and troubles at home, if that's what you are talking about—I don't know.

I mean, there was a pressure on me at home, I wasn't getting along too good at home, if that's what you mean.

Q. Well, I am asking you.

A. But I never voiced that, or spoke about it, that I can recall. I mean, it was something that I kept inside of myself.

Q. But you were under a nervous strain?

A. Not too much.

[fol. 421] Q. You weren't?

A. No, I don't think so.

Q. When did the difficulties between you and your wife reach a head?

A. I think sometimes the latter part of '42, but I'm not positive.

Q. The latter part of '42?

A. I think so.

Q. And you were separated?
A. Yes.
Q. At that time?
A. Yes.
Q. Does the name George Lohr mean anything to you?
A. No, it don't.
Q. You never heard of it?
A. No.
Q. To get back to the matter of the miners and Lewis, do you recall whether or not any comments were made regarding your position, or the position you took on the floor, on that particular occasion?
A. No, I can't recall.
Like I said before, there's been many, many battles on the union floor. I wish that right now I could recall all of them, but I can't. I had many battles—if I could—if I could recall the exact things.
[fol. 422] Q. Do you recall whether there was any name-calling on that particular occasion?
A. I'm not sure. I'm pretty certain there was.
Q. Rather—
A. It was a big issue.
Q. Yes, a rather emotional meeting?
A. Yes.
Q. Would you describe it as a very emotional meeting?
A. Yes, yes, I think I would.
Q. And then the disputes were very clear-cut, the differences of opinion were very clear cut?
A. I can't recall.
Q. You don't recall?
A. No.
Q. Do you recall whether or not the resolution was ever passed?
A. No.
Q. Do you know whether or not there was a resolution?
A. I don't know, no. I have an idea that Brodose brought a resolution in—I'm not sure.
Q. I didn't hear that latter part.
A. I say I have an idea, vaguely, that Brodose did bring a resolution in, when you speak about it. If it's the meeting that I think it was—and I'm not sure that it was; it's—

because it's so vague—it was held down at Winslow and [fol. 423] Fillmore, and if that's the meeting, held in the evening, at night—I'm not positive now. Like these meetings, they get mixed up in your mind after all this time.

If that was the meeting, it was a—it was a hot meeting there.

Q. I might help—

A. And if that was the meeting—

Mr. Lipsitz: Wait a minute, wait a minute.

Q. I might help fix the date for you: it would be somewhere around the end of July or the first part of August, 1943; does that help fix the particular date?

A. Have you got the—have you got the place of the particular meeting?

Q. Well, it would have been at the place where the local union met, wherever that might be.

A. Mr. Leone, the local at that time met in various different places. We sometimes met at one of two different halls, down on Grant Street; we sometimes met at the Winslow Hall: there was times when they met at a hall down on Utica Street—depending a lot of times on how much money they would spend, and how big a turnout they expected to get. I can't recall exactly where the meeting would have been held.

It was at this meeting that I am recalling now that I had some pretty rough words against the position that Brodose took, if it's the meeting I could recall. [fol. 424] And there was another time down on Grant Street, in the hall down there, that the same thing took place. I believe that was over the time when he wanted to steal whole control of the local union, after the administrator had been brought in, and he was just going to ignore everybody, he was boss.

But I can't—I can't recall exactly what you bring up.

Q. Did you attend the UAW convention in the fall of 1943?

A. I did, yes. I was there at every session.

Q. Which group did you support at that convention?

A. Reuther.

Q. Walter?

A. Leonard, yes.
Q. The Reuther group?
A. Yes.
Q. Did you make that position known to—
A. I was one—

Mr. Lipsitz: Wait a minute, let him finish the question.
The Witness: Yes.

By Mr. Leone:

Q. Did you make that position known to individuals back in the Buffalo area?
[fol. 425] A. You mean the position that I took?
Q. Yes.
A. Oh, yes, definitely.
Q. And whom would you make that position known to?
A. Anybody and everybody. I was elected on them grounds. I helped to support Reuther; I saw Reuther; I was in a caucus with Reuther before the convention.
Q. Were there any specific individuals that you thought should be kept apprised of your position?
A. Anybody that I could contact. Anybody that—
Q. No, but that isn't my question: were there any specific individuals?
A. No.
Q. Any specific individuals that you felt should have been kept advised?
A. No.
Q. Who was the other group besides the Reuther group?
A. The Reuther group?
Q. Yes.
A. Progressives. They had the Unite and Win.
Q. No, I am speaking of the convention.
A. Well, Progressives, I think.
Q. Who was the head of that group?
A. Maturski, I guess.
Q. No, I am speaking of the convention, the UAW convention.
[fol. 426] A. Oh, I don't quite follow you.
Q. Well, you were a delegate—
A. Yes.

Q. —to the convention, were you not?

A. Yes, yes.

Q. And at that particular convention there were various factions?

A. Within the convention?

Q. Yes. One of the factions was the Reuther faction?

A. Was the what?

Q. The Reuther—the Reuther group?

A. Yes.

Q. Were there any other factions?

A. Yes, Thomas-Addes.

Q. Who?

A. Thomas-Addes. And Frankenstein. They were in—they were more or less working in the same line.

Q. What was their position, if you recall?

A. Well, they was stroagly in favor of—although they didn't come out and say so in many times, they were still in favor of the piece work plan.

And I know there was a lot of hot sessions behind closed doors. There was a lot of things that they didn't let out on the convention floor, until somebody got up and asked for them to make themselves known as to what they stood [fol. 427] for, what they were supporting.

Q. And does the name Gray mean anything to you in this connection?

A. Eddie Gray, yes.

Q. What faction was he with?

A. Reuther.

Q. The Reuther group?

A. Yes.

Q. During the period 1941 to 1943, did you make any contributions to any cause whatsoever?

A. I can't recall if I didn't or if I didn't—if I did or didn't, but I'm sure I must have.

Q. Yes; do you recall for example whether there were contributions to the normal organizations like the Salvation Army and the Red Cross and—

A. Yes.

Q. —funds of various types?

A. Yes.

Q. Would you usually contribute to those sorts of things?

A. I--I contributed my money usually by myself. However, I guess I contributed through the shop as well.

Q. That is the point I am trying to get at.

A. Especially the Salvation Army.

Q. Was there as a matter of practice an individual or [fol. 428] several individuals in the plant that went around asking for contributions for various causes?

A. Well, I think that was always done through the company.

Q. Done through the company?

A. Yes, through the foremen and assistant foremen, I believe.

Q. How about—

A. If I remember right.

Q. How about the union, would the union sponsor—

A. I don't think—

Q. Let me complete.

Would the union sponsor any particular causes, and request that the employees pay?

A. I can't—I can't recall any.

Q. Are you the type of person, Mr. Taylor, who is very careful, speaking of that period, now, or who was very careful about things that he signed?

A. I don't think I was.

Q. If someone came up to you with what they said was a petition for a particular cause, and asked you to sign, would you read the petition before you signed it, ordinarily?

A. Usually it would amount to how much print was on it, to read.

Q. And if there was a great deal of print—

[fol. 429] A. If I would take the man's word for it as to what it meant, I would sign it, yes.

Q. How about application forms, would it be your habit to go over application forms—

A. Application—

Q. Any kind of an application form, go over them very carefully, or—

A. Before I would sign it?

Q. Yes.

A. Yes.

Q. An application form you would go over carefully?

A. Yes, yes.

Q. How about contributions? If someone came over and asked you for a contribution, and said, "This is for the Red Cross," would you question them about them, or would you contribute, take their word for it?

A. I would—I would take their word for it.

Q. Would you tell the Board, Mr. Taylor, what you believe to be the aims of the Communist Party?

Mr. Lipsitz: Are you talking about what he believed them to be in 1941, 1942 and 1943?

Q. Now. What he believed the aims of the Communist Party to be now.

Mr. Lipsitz: At the present time?

Q. Yes.

[fol. 430] A. I think, to sum it all up, it would be control of the world.

Q. You are speaking of the Communist Party in the United States—

A. The whole thing.

Q. Do you make any—

A. Wherever—wherever it exists.

Q. Do you make any distinction between the Communist Party of the United States and the Communist Party as it exists other places in the world?

A. They are one and two of the same kind.

Q. They mean the same thing to you?

A. The same thing.

Q. And do you relate the Communist Party specifically to Russia, as being under the domination of the controlling group in Russia?

A. I think that Russia—that Communists all over the world are controlled by the little clique in Russia.

Q. How about some of the principles of the Communist Party, like sharing the wealth and distributing it to the working man?

Mr. Lipsitz: Just a minute. Is that the end of your question?

Mr. Leone: Yes.

Mr. Lipsitz: Do I understand from your question that [fol. 431] you state this to be an aim of the Communist Party throughout the world?

Mr. Leone: Well, let's say if that were an aim.

Mr. Lipsitz: That's right, fine.

By Mr. Leone:

Q. If that were an aim, what would your opinion be regarding it?

A. To start with, it's an impossibility. If it could be done, by Russia, I believe it would be done the same way they are doing everything else—won't come up to my expectations.

Q. Do you believe that someone else should have more than you have, more money and more goods?

A. If he works for it, if he's smart enough to get it, yes. As long as he don't kill somebody, or hold a gun in somebody's face, yes.

Q. How do you feel about competition, do you believe that competition is wasteful? I don't think—

A. I don't—will you—

Q. Well, there is a school of thought which thinks that because of competition we don't get the greatest benefit from our means of production.

A. I disagree. I think through competition you get a cheaper product, you get a—more skill involved, you have a greater progress than you could get in any other way.

Q. What do you think motivates people to work, work [fol. 432] hard; what motivates people to work hard?

A. Various different things. I don't believe it's very many people, as a whole, really have an interest in work.

Q. Why do you work hard?

A. But—it's a means to an end. I mean, we have to live, and we want to live right, and we like nice things, we like nice homes; we have to work for them, so you take an interest in your work. And once you are in your work, you see if you can do an especially good job. You try to be better than the other fellow.

I think a good example of that would be, I got a boy that works for various different people, and—in roofing, and

if he'd have just worked for anybody, he'd have went along like everybody. But he wasn't satisfied.

Q. Do you know—

A. He wanted to work—I didn't finish. He wanted to work where he could get money for what he'd done. It didn't matter how hard he worked—where he could work as hard as he liked.

The consequence was—he—he's one of the few of the fastest in Buffalo. And that—that I can back up, that's a true statement.

Q. Do you know anything about the term "dialectical materialism"?

[fol. 433] A. I don't even know what you mean. I'm not a college graduate.

Q. Do you know what position you took on the Marshall Plan?

A. I don't even know what the Marshall Plan is offhand, right now.

Mr. Leone: I have no further questions.

The Witness: I don't think I took any position on the Marshall Plan.

Chairman Waldman: Commander Dunstan.

By Commander Dunstan:

Q. Mr. Taylor, Exhibit 4 here is a statement of some of the things that the union stood for and against—

Mr. Lipsitz: May I suggest, Commander, that I don't think the exhibit showed what the union stood for; it showed what a group of persons running on a particular slate or program stood for.

Q. Exhibit 4 shows what a slate of the union stood for and opposed in 1943; do you today subscribe to those same remarks?

A. Can I have that a minute?

Q. (The document was handed to the witness.)

A. Yes, I do, with the exceptions of the Smith, Connolly Bill—I started to say something about it before, didn't finish. I don't recall what it is.

[fol. 434] Q. Other than that exception—

A. Yes, yes, I do.

Q. In answer to a question asked by Mr. Leone, you felt that it was the right of any individual to earn more than anybody else, provided he was able to do so and willing to do the work?

A. Yes.

Q. How do you resolve that remark with the opposition to the incentive plan on the slate?

A. The incentive plan is a—is a sweat shop, in plain words. A policy that goes on to where one man is capable of producing a hundred units, another man is capable of producing a hundred and fifty units, so they each—each gets paid for what they do.

But then somebody comes along, and they'll produce 160 units, which will cause the corporation to cut their rates. They will say "If he can do it, this guy can do it, too."

That guy can't do it, and he wants a living wage, too.

Mr. Lipsitz: May I just comment for the record—and I am not arguing with the Commander—but just so it shows in the record at this point that the socalled Stakhanovite program in Russia, as I understand it, and as I am sure some of the members of the Board understand, is precisely an incentive type of plan of production.

By Commander Dunstan:

Q. In other words, yours thought, Mr. Taylor, in response [fol. 435] to my question, is that if the number of parts made in any period of time increases, is increased, the manufacture of that particular part is increased by one individual, and somebody else can't keep up with it, you don't want to have the one who can't keep up with the production jeopardized in so far as pay is concerned; is that correct?

A. No, I don't want him jeopardized to a lower standard of living than what I think he is entitled to. The other man is working much harder, he's much more skilled, he's much more capable of doing the job much better and faster. For to earn more money, I think he is entitled to it.

If there was some way of stopping a corporation from using it as a knife for to cut the wages of the people,

building sweat shops, I'd say it's a good thing. I'm in favor of piece work, if it could be controlled right, for to let a man get what he is entitled to. But it is never—I've never seen it that way.

So therefore I am—I ain't opposed to piece work—I don't believe in you going along every day and producing a hundred units, and me producing 50, and me getting the same money you are getting. I don't think that's fair, I don't think that's just.

Q. In other words, the individual who produces the hundred units should get more money than the one that produces the 50?

[fol. 436] A. That's right.

Q. And yet you oppose that?

A. No, I don't oppose it on the grounds of that, I oppose it on the grounds of the position that the corporations take on the action, of the corporations takes on something like that. They cut that down where some people can hardly live.

Q. Was this one of the issues that came up just prior to the walkout in 1943?

A. No, it had nothing to do with the walkout, absolutely nothing. It was—

Q. It was just local union politics?

A. It had nothing to do with the walkout, absolutely nothing.

You see, in our department that wouldn't be an issue, because they could never put our department on piece work. We never produce the same tool twice, or the same die, or the same part twice. It is—if we do, it's very very seldom, and even then there is some kind of a change.

Q. To get back to this walkout, as I understand now there were a number of grievances that piled up, and no action was taken by anybody in that regard; is that right?

A. That's correct.

Q. Who was supposed to take the action?

A. Well, I wasn't on second shift, but I do think that [fol. 437] the foreman would have settled most of them grievances.

Q. Who was the foreman?

A. That I can't recall, even.

Q. But he didn't?

A. It seems to me it was Al Morgan, but I'm not sure.

Q. It was a man?

A. Yes.

Q. And he didn't do anything about it?

A. That's right, he didn't.

It—it was referred to higher steps, some of them way on up to the top, and back down again, and no favorable answers, on proper action on it.

Q. Who was the foreman?

A. I'm not sure, but I—I believe Al Morgan was on the second shift at that time, I can't be sure of it.

Q. Was he also your foreman?

A. No.

Q. At all?

A. He may—like I say, I don't recall who the foremen were—we had so many in and out of there around that time, and I can't recall that he was on days at that time or on nights. He may have been mine.

Q. You are not sure whether he was or not?

A. No, I can't recall now which foreman was where. He had quite a few foremen, in and out.

[fol. 438] And then I was—I went to Burlington, and—

Q. In answer to a question of Mr. Lipsitz, you stated questions 1 through 6 of the Personnel Security Questionnaire, dated July 2, 1956—

Mr. Lipsitz: Excuse me, Commander, that ought to be with reference to the certificate of non-affiliation, not actually the Personnel Security Questionnaire.

Q. Right. Then I will rephrase my question:

The first six questions of the PSQ of July 1956 were correct?

A. 195 what?

Q. 1956, the second form you filled out. This one (indicating the form).

A. Yes, yes.

Q. Are the first six questions in the one you filled out in 1954, correct?

A. Yes.

Q. What is the difference between place of birth in one,

"Hamilton, Canada," and the other one "Town of Gray, County of Huron"?

A. Well, I—

Q. Are they synonymous, are they the same thing?

A. No, no. There may be a mistake there. I have my birth certificate, if you want it?

I never remembered that in there, because I never used [fol. 439] it, County and Township there, I never used it, I never remembered it.

From the time I was, I guess, six months old, I was raised in Hamilton. That was my home town. I always used it.

Q. From the time you were six months old, you were in Hamilton?

A. Just about, yes.

Q. So I assume that after that you found you were actually born in the Town of Gray?

A. No, I knew that before that, but I never looked at it. Hamilton was always my home town, and I never looked at them places, they weren't fresh in my memory at the time. And I didn't have a birth certificate in my pocket, so I just put down Hamilton.

Q. When did you get your birth certificate?

A. Oh, I have had it right along. I just didn't have it with me when I got the—made out the papers.

Q. When you made out this first one?

A. Yes, I didn't have it.

Q. You said a few moments ago that you are not a college graduate; what is the last school that you went to?

A. Hamilton Technical High School.

I went to Boys' High School, Boys' High in Buffalo; night school for a while. Had a—more or less I was just going [fol. 440] there to make things up, make parts.

Q. Was that a vocational school?

A. Yes.

Q. How does it happen that in the 1954 questionnaire you omitted that?

A. Maybe I didn't think it was important—I don't know.

Q. Did you read either one of these before you signed them?

A. Yes.

Q. Carefully?

A. Yes.

Q. There are also some discrepancies in your residences.

A. That I knew, that I told them when I give it to them. I give it to the best of my ability.

Q. As an example, one of them states that you were in Hamilton, Vermont, from 1943 to 1945; the other one says that you were in Burlington, Vermont, from 1942 to 1946.

A. If I hadn't of looked at the days on it f this case, I wouldn't be able to give you the right dates . w. I just didn't remember.

Q. Do you know what the right dates are?

A. Now, I think they are from October 1944 to July 1946 —I believe.

Q. October 1944 to July 1946?

[fol. 441] A. Something like that, I think.

Q. Is that correct now, or not?

A I think so.

Well, I knew I got that from the corporation. I didn't— I didn't remember. When I made them statements there I tried to get the corporation to give me the dates on that, and I couldn't get them. And I put them down by guess.

Q. Mr. Rosmyslowski said that it was around Christmas 1943 or early 1944 that you went to Vermont; was he incorrect in that?

A. Must be. I—my—my memory for dates isn't too good.

Q. Mr. Mear says that it was about the middle of 1943 that he thought you went to Burlington, and you came back in about 1946, so he must have been mistaken also; is that correct?

A. Yes.

Q. Mr. Wagner said you went to Burlington in 1944, he thought; and for the two years preceding 1942 and 1944 you worked on the same shift; is that correct?

A. Yes.

Q. Is that correct?

A. That's right.

Q. In answer to a question of Mr. Leone's you said you had never heard of Joseph Wiseman prior to 1943.

[fol. 442] A. Yes.

Q. What time in 1943?

A. I beg your pardon?

Q. What date in 1943, if you recall?

A. I didn't recall Sam Wiseman till years after '43. Just what I—just what I—just whether I heard of—just whether I heard—I didn't even know him then.

Q. Did you know anything about him?

A. I heard his name since I come in this meeting, and that's the—previous to that I don't remember him at all.

A. I don't remember the name, I never heard the name.

Q. In 1943, in the campaign to reelect Brodose, in Exhibit 2 Mr. Maturski stated that Sam Wiseman, a Communist, helped to write the propaganda sheet against Maturski?

A. Could be possible. I wouldn't know.

Q. You didn't know anything about it?

A. No, nothing about it.

Q. And Mr. Maturski also stated that Wiseman was a friend of Brodose?

A. Who, Wiseman? Well, I—I believe now he must have been—they are both in the same category.

Q. Did they work in the same place?

A. What?

Q. Did they work in the same place?

[fol. 443] A. I don't know where Sam Wiseman worked, I don't know nothing about him.

I've heard since these meetings started that he was a—some kind of a leader of the Communist Party, something. I don't know.

Q. If what Mr. Maturski said is correct, that Wiseman did write some of this propaganda against Maturski, and was a friend of Brodose, is it possible that you might have met him without knowing it?

A. You mean he'd use an assumed name?

Q. No—

A. No, it's not possible.

Q. Maybe you didn't remember his name?

A. No, it's not possible that I'd meet him then, because if I had met him, on the grounds that he was going to work with us, not being able to state any place in the union—in the company where he worked, I'd want to know where he come from, who he was. I mean, I think the first thing I'd ask him is what department he works in.

Q. Who is Florence Burford?
A. Who?
Q. Who is Florence Burford?
A. I don't know her.
Q. Rachel Perkins?
A. No.

[fol. 444] Chairman Waldman: Is your answer no?
The Witness: No, no.
Chairman Waldman: You don't know her?

By Commander Dunstan:

Q. You never heard of either name?
A. No.
Q. Never saw them at any union meetings?
A. I wouldn't know them if I see them. I don't know who they are.
Q You stated earlier that you bought the Daily Worker once on a newsstand downtown; I presume that was Buffalo; is that right?
A. Yes.
Q. When was that?
A. Probably some time in '43.
Q. Why would you have happened to have bought it at that particular time?
A. I don't know, there was a lot of talk around about Communism and Communists, and I knew nothing about it. I just wondered if that would enlighten me and give me some—something to go on as to what it was. I didn't know what it was.
Q. Did you read the newspaper?
A. Pardon?
Q. Did you read the newspaper?
[fol. 445] A. I read it, but I got no sense out of it.
Q. Did you read it thoroughly, or just glance through it?
A. Oh, I couldn't—I couldn't get interested in anything, there was nothing there to get interested in. There was a few—a few issues on labor, I believe, if I remember right. After what I have seen, I couldn't go along with any of it.
Q. Do you remember when that was in 1943?

A. No, I don't. I wouldn't even know if it was in '43. I don't remember when I bought that paper.

Q. You don't remember whether it was before or after the walkout?

A. No, I just happened to be by a newsstand, and I saw it there, and I bought it.

I remember when I bought it—I remember when I bought it the—I had a funny feeling about walking up there and asking for such a thing, after I knew what it was.

Q. Well, you just said a moment ago that you bought it because you wanted to find out something about Communism?

A. Yes.

Q. Well, why should you have a funny feeling?

A. Well, somebody might think that when I bought it that I'm a Communist. I didn't like the feeling.

Q. Didn't you think about that beforehand?

[fol. 445] A. Pardon?

Q. Didn't you think about that beforehand, too?

A. Sure, I thought about it beforehand?

Q. But you bought it?

A. Yes, I bought it.

Q. In September 1943 you were in Buffalo then; is that right, working and living in Buffalo?

A. Yes.

Q. Did you ever go to any meetings up in Niagara—

Mr. Lipsitz: Niagara County, Commander, is that your question?

Q. Niagara Falls.

A. Never.

Q. The next question: any meetings in Niagara County?

A. No, never.

Q. You separated from your wife in 1943; is that right?

A. I don't know, I—the whole thing is dates; when you start giving me dates, it's all messed up to me, I don't recall dates too well.

Q. I don't want to make this painful, but I am just trying to get you to recall some things.

A. I mean, if I could give you an honest answer—I

could give you an honest date, I would, believe me, but believe me, I can't. I'm not down here to tell any lies.

Q. Did your marital troubles have any bearing on your [fol. 447] going to Vermont to work?

A. Yes.

Q. Is that the reason for going there?

A. Yes.

Q. Did your son go with you, Eugene?

A. No.

Chairman Waldman: Off the record.

(Discussion off the record.)

Chairman Waldman: On the record.

By Commander Dunstan:

Q. Did your son Eugene live with you during 1942, 1943, 1945?

A. Yes.

Q. That entire period?

A. With the exception of the time when he was in the school.

Q. And he was in school at the time you were in Burlington; is that right?

A. When I first went to Burlington.

Q. That was in 1944?

A. Yes.

Q. A little earlier you stated that you did not know that Brodose was a Communist at the time you were associated with him on the slate of the Unite and Win caucus; but that you had heard rumors before that. Can you tell us [fol. 448] when you first heard rumors to that effect, that Brodose was a Communist?

A. I think right around the late '42, when he was getting his slate together for to run for office.

Q. Did he ever give you anything to sign?

A. He could have. I don't recall any.

Q. It is possible, then, that he might have given you this independent nominating petition for Communist Party members, Communist Party candidates?

A. It could be possible, but I don't believe.

Q. Could it have been anybody else?

A. I think if I signed anything like that, I think it must be—had to be somebody else.

Q. Not Brodose?

A. I don't think I would have signed anything for Brodose.

Q. In answer to a question by Mr. Leone, you stated that you could recall having no correspondence during 1941, 1942, or 1943?

A. No, I don't recall any.

Q. No written correspondence. Did you have any during 1944, 1945, or 1946, when you were out of town?

A. Wrote to my son in that school.

Q. I mean anybody else, not family?

A. Not that I can recall.

[fol. 449] Q. Nothing at all?

A. No.

Q. Did you get any letters from Buffalo?

A. I'm not sure, I may have got one from my sister, or someone like that.

Q. Not the family, people outside of the family.

A. I don't—I don't think I ever received any.

Q. What was the union set-up in Burlington, the same as Buffalo?

A. Pretty much the same.

Q. Was there a Communist faction there?

A. I don't know. I never had any dealings with the union up there.

Q. You were in it—you were in the union, were you not?

A. I don't think so.

Q. In Burlington?

A. I don't think so, no.

Q. Was that a—

A. I may have been—I'm not sure. I don't recall.

I never—never attended any meetings, or—or had any part in union affairs, and I don't recall if they had a system there to take out our dues. I don't think so, because I think our dues were taken out in Buffalo.

We—when I went up there I didn't transfer to Burlington, I went up there on special assignment.

[fol. 450] Q. To Burlington?

A. Yes.

Q. How were you paid while you were at Burlington, did you get a check from Buffalo, or did they pay you in cash from Burlington?

A. I got a check from Buffalo.

Q. So presumably you were still a member of the union in Buffalo, and your dues were being deducted?

A. I believe that's the way it was.

Q. But you don't know of any union activity in Burlington?

A. No, I didn't have any.

Q. In addition you know of no union activity there, whether you participated or not?

A. They had a union there. I didn't participate.

Q. But in that union you don't know whether there were any Communist factions, or not?

A. I wouldn't have the slightest idea.

Commander Dunstan: That's all I have.

Chairman Waldman: Mr. Simms?

By Mr. Simms:

Q. Mr. Taylor, in the period, for instance, 1943, when you ran in the first election with Allie Brodose, roughly how many employees were there in Bell Aircraft Corporation—just very roughly?

[fol. 451] A. (No response.)

Q. 5,000, 7,000, or what?

A. Well, let's see, it seems to me there must have been eight, ten thousand.

Q. Anyway, it was a very sizable number; is that true?

A. Yes.

Q. Out of such a sizable number does it strike you as in any manner peculiar that he should be solicitous that you should run on a ticket with him? I mean, there were terrific numbers of people there to run; did it strike you as peculiar that you were sort of designated to run on this ticket, or requested to run on the ticket with him?

A. No.

Mr. Lipsitz: Did you answer that question?
The Witness: Yes, I did.
No, no, it didn't strike me.

By Mr. Simms:

Q. Now, I think in the second election in 1943, for some local union office, you stated your name was put on the ballot over your objection?

A. Yes.

Q. Well, in other words, had a certain deadline passed, and you didn't have the right to remove your name, or what was the status there; give me a little bit further on that?

A. Well, as far as I can recall—I think I am quite cor-
[fol. 452] rect—I didn't think—I don't think there was any deadline. I think it was still in '43—I think it was previous. Like I say, I was a committeeman, I never run for committeeman, I was never elected as a committeeman. I was made a committeeman. And I think the same thing there. I think this man was desperate for candidates, candidates of—of quality as good as he could get.

And he made the statement that he was picking out the best; and he put people's names on there, whether they liked it, or whether they didn't.

Q. Well, now—

A. Especially—especially after the first election. I mean, the first election I didn't worry about having my name on it.

The second election I didn't want any part of it.

I can't—I can't answer the question as to whether I could have went further for to get my name taken off. However, I did ask for my name to be taken off, I asked for it to be blotted cut. I didn't want to be on the slate, I didn't want to run for office.

Q. Well, you say—

A. At the time I was so fed up, I didn't want to run any ticket.

Q. Well, you certainly didn't do anything affirmative toward having your name taken off, or presumably it would
[fol. 453] have been stricken from the ballot, wouldn't it?

A. What would I do? I don't know anything of what I could do. At that time—

Q. Well, they certainly didn't make a captive of you, and have you on there against your own wishes, if you had taken some affirmative action; is that true or not on that?

A. I don't know if I had taken it to—before the company, before the government, before somebody else, and making an issue out of it—I don't know. But I mean, right there and then I don't know what I'd do, unless I go and beat somebody's brains out.

Q. Then, again, out of all those employees, maybe 10,000 even, doesn't it strike you as peculiar that he should particularly want your name on there, unless you had some rapport or mutuality of feeling with him on general issues?

A. No, it don't strike me as peculiar.

Q. It would appear to me if I were heading a ticket and wanted other people on the ticket, I would want people who were sympathetic and were going to espouse my ideas. It would appear that way to me, and I'd like for you just to give some thought on that. In other words, if you were heading some ticket, you wouldn't necessarily want to put people on that ticket who were opposed to you, would you?

A. He—he had a very hard time getting people to run with him at that time. I don't think anybody on that ticket [fol. 454] wanted to run with him at that time,—the ticket just went out.

He was a very dictatorial man, he went to a meeting, a union meeting, and defied the whole membership as to what authority he held in the union when they took him out as president.

I'm a—I'm a new man at it, I'm not an oldtimer. I certainly—Mr. Simms, if I could have had my name taken off of there, I would have had it taken off.

Q. Would you be kind enough to put the copy of the statement of reasons there in front of you, if you have it? Do you have a copy there?

Mr. Lipsitz: Yes.

Q. With regard to a-1, membership book, or card number 3060, evidencing your membership in the Communist Party, does that number strike any bell with you, can you recall that you have ever had anything that's had the number 3060 on it?

A. No, no, I can not.

Q. I mean, it absolutely rings no bell to you?

A. It rings no bell in my memory whatsoever. I can't figure it.

Q. Now, do you know, in No. 2 there, under subdivision A, you were transferred from Branch B and C to Branch 12: have you ever been in anything in your life that's had a Branch B, C, or a Branch 12 attached to it?

[fol. 455] A. No.

Q. Anything—I'm not necessarily speaking of the—

A. No.

Q. —Communist Party?

A. No, nothing.

Q. Mr. Taylor, I am going to hand you a tablet here, and ask you if you would want to be kind enough to sign your name on it several times, maybe once and twice in pencil, and once and twice in ink. Would you oblige me with that?

A. I sure will.

Q. Starting with your usual and regular signature, once and twice in pencil, and then once and twice in ink on that.

A. My full name?

Q. Just your regular—whatever your regular signature is, however you sign it.

A. Well, sometimes I write Chs.

Q. Well, any way you want to sign it. Skip a couple of lines between the signatures, so that it will leave some space on there, so they won't be crowding on each other.

Now skip several lines and sign with a pen—skip down there, so there will be some space between them.

(The witness complied with the requests of Mr. Simms.)

Mr. Simms: Mr. Chairman, this piece of paper, which I have dated 14 November, 1956, has six signatures by Mr. [fol. 456] Taylor, three in pencil, and three in ink; and I wonder if you would be kind enough to accept it as an exhibit?

Chairman Waldman: You have no objection, have you, Mr. Lipsitz?

Mr. Lipsitz: Well, I have no objection, certainly, to his signing his name, or rather, placing his signature on that sheet of paper, and I didn't raise any at the time.

I certainly object if this is going to be used as a basis of comparison with a signature or writing on an instrument that we are not confronted with, nor which we have the opportunity to examine.

But I make that statement for the record, of course, because I know that I won't have the opportunity to be confronted with it anyway at this hearing.

Chairman Waldman: Let me ask you again: Do you have any objection to it?

Mr. Lipsitz: That's the objection.

Chairman Waldman: Well, if you have any objection, we won't admit it in evidence.

Mr. Lipsitz: Then I will withdraw my objection to it being admitted, and merely repeat the same statement that I made as a comment, not as an objection.

Chairman Waldman: All right, then, without objection it is admitted. We will mark it No. 6.

(Exhibit No. 6 was received in evidence.)

[fol. 457] Mr. Lipsitz: With the further comment also that if it is going to be used, by any fair rule of evidence, in an administrative hearing, or in any kind of a hearing, handwriting experts should be the only ones competent to judge the comparison of similarity; and if a handwriting expert is going to have his opinion solicited, we should have the same opportunity as the Board members to solicit his opinion.

Chairman Waldman: Fine.

But at this time, Mr. Lipsitz, I don't know the exact purpose of it, except that Mr. Simms asked that it be admitted.

Mr. Lipsitz: I don't either, I can only speculate.

Chairman Waldman: We will just admit it for general purposes at the moment.

Mr. Lipsitz: What is the number, 6?

Mr. Simms: No. 6, Mr. Lipsitz.

Chairman Waldman: 6, yes.

Mr. Simms: Nothing further.

Chairman Waldman: I have no questions.

Mr. Lipsitz, do you have anything further?

Mr. Lipsitz: One or two questions.

Redirect examination.

By Mr. Lipsitz:

Q. When you went to Vermont, Mr. Taylor, did you go as [fol. 458] a member of supervision?

A. No.

Q. You were still in the bargaining unit?

A. Yes.

Q. Was it, however, considered a promotion; or did you volunteer, or were you asked, or how did it happen that you went?

A. I—

Q. You gave as a reason that you wanted to get away from some domestic troubles, but—

A. I—I was asked to accept the position of night superintendent in the tool room.

Q. Asked by whom?

A. Don't remember the man in charge, top management.

Q. This was somebody from management—I don't care about his name—at Bell?

A. Top management.

Q. You say as night superintendent in the tool room; is that a position with some managerial authority that you had?

A. I had three foremen under me.

Q. Then you were a member of supervision when you took that job?

A. Yes, yes.

Q. Then in answer to my question, the work that you had in Burlington made you a part of supervision; is that correct?

[fol. 459] A. Yes.

Mr. Lipsitz: Just for the record, obviously the union did not represent at that time, nor has it at any time represented employees in management or supervision, Mr. Chairman. Whether or not he had remained a member of the union in fact, I don't know, and I don't think he really knows, as developed by his testimony. He said he wasn't represented by the union at that time.

By Mr. Lipsitz:

Q. Mr. Taylor, just so that we are perfectly frank about your answers, and as you have pointed out, because you are not here to conceal anything or tell anything but the truth, I would like to direct your attention to a question that was asked you: Have you ever read the Daily Worker? And I think you answer that once you had purchased—you said "picked up," and then agreed that you had purchased a copy from a newsstand?

A. Yes.

Q. Did you ever read what is known as the Sunday Worker?

A. Yes.

Q. Once, or more than once?

A. Oh, maybe six or eight issues.

Q. When was it that you read that?

A. Maybe 19, maybe 1939.

Q. How did you come to read the Sunday Worker at that [fol. 460] time?

A. I was organizing my department, my shop, the Cold Springs shops, the International Railway Company, in Buffalo, New York.

Q. That had nothing to do with Bell Aircraft, did it?

A. No.

Q. Was it a street railroad company?

A. That's right.

Q. On whose behalf were you doing this organization work?

A. The CIO.

Q. Go ahead.

A. I was in there working, trying hard for to get the people to sign up in the union.

Q. Just a second.

Were you also an employee of the International Railway Company?

A. Yes.

This paper that I was reading, this Sunday Worker, was coming to my home every Sunday, or at least every other Sunday, or so,—for a short while I didn't know where it come from, but it was there. I read the paper—at least I read parts of the paper. And I—the only parts that I

read was, oh, something concerning labor in this plant, that plant, or some other plant.

I had no more idea that that was a Communist paper than [fol. 461] I have that—than anything. I just didn't give it the slightest idea that it was a Communist paper, I didn't even know what it was.

I even took that paper into the shop, showed people articles in it. I had no more idea that that was a Communist paper.

When somebody told me that that was a Communist paper, I told them they were crazy.

Then I found out that that was a Communist paper. I didn't read the paper any more, didn't take it any more, didn't have any more to do with it.

Q. Do you know how it got to your house?

A. Yes.

Q. How did it get to your house?

A. A man by the name of Don Linquist.

Q. Is he a friend of yours, or what?

A. No.

Q. Well, you say that you got it; you didn't know how you got it, but what did you do, find out afterwards it was he?

A. Yes. Yes, I found him delivering the paper.

Q. Did you ever pay him for the paper?

A. No.

Q. How did Don Linquist come to deliver the paper to you; do you know?

A. Well, I believe it was because I was trying to organize [fol. 462] the IRC.

Q. Did he ever tell you that this was why he delivered it to you?

A. No.

Q. Did he—

A. Wait a minute, maybe he did, maybe he did. It seems to me he did. I think he made mention that he had heard that I was working hard for to organize the IRC, and that he thought some of the information in the—this paper would help me, give me some ideas, and so on.

Q. Was it about this time that you say that you stopped taking it?

A. That's right.

Q. What did you do, how did you cause it to stop being delivered to your house?

A. I told him I—I heard it was a Communist paper.

And he said, "Yes."

"Well," I says, "is it?"

And he said, "Yes."

I said, "Are you a Communist?"

And he said, "Yes."

"Well," I said, "you take your paper and get out of here and don't ever come back to my door again," I said, "I don't want no part of you nor your paper, either one."

Q. How did you know his name was Don Linquist?

[fol. 463] A. I asked him his name.

Q. After you asked him or told him not to deliver it any more, did you get it again?

A. Once in a while it would be still inside the hall door.

Q. Did there come a time when it stopped?

A. Yes, it stopped.

Q. When would you place that, if you can?

A. I can't. I—

Q. Was it before you went to work at Bell Aircraft, or after?

A. Oh, before I went to work at Bell.

Q. Did this Don Linquist ever ask you to join the Communist Party?

A. No.

Q. Did you ever join the Communist Party when he was doing this?

A. I never joined the Communist Party.

Mr. Lipsitz: Those are all the questions I have.

Chairman Waldman: I have a question to ask Mr. Taylor:

Recross-examination.

By Chairman Waldman:

Q. Mr. Taylor, in response to a recent question of Mr. Lipsitz' you told us about some organizing activities that [fol. 464] you had about 1939?

A. Yes. That—

Q. Were you—
A. That—may I—

Mr. Lipsitz: Wait a minute.

By Chairman Waldman:

Q. You told us about—
A. I'd like a clarification here: I'm not sure that it was '39—it may be into '40—I'm not sure. But I think I am correct in saying '39.
Q. Approximately 1939?
A. Yes.
Q. Were you engaged in any similar activity, union organizing of any kind, prior to this time that you employed by the IRC?
A. No.
Q. Where were you employed in 1937?
A. IRC.
Q. 1936?
A. IRC.
Q. When did you first start to work for IRC?
A. (No response.)
Q. Approximately?
A. 19—I believe it was 1934, or '35—I'm not positive. It was right around there.
[fol. 465] Q. Now, let me start off this way: Was there a union of any kind at IRC?
A. Yes.
Q. In 1936?
A. Yes.
Q. Was it a company union?
A. Yes.
Q. Now, in 1936, or around that period of time, were you engaged in any way in attempting to form some other type of union than a company union?
A. No.
Q. Were other people in the IRC engaged in such an attempt?
A. No, not to my knowledge.
The first I knew of any activity of trying to organize IRC into anything outside of a company union was the

day when there was a band struck up outside the door, and a man on a soap box.

Q. That was about when?

A. That's what I say, I think it was 1939.

Mr. Lipsitz: Who was the man, may I ask?

The Witness: Michael Quill of New York City, of the Transport Workers Union.

By Chairman Waldman:

Q. At the time that you were in the IRC were you [fol. 466] residing at 523 Masten Street, Buffalo?

A. Yes, I was.

Q. During the questioning by Mr. Leone he asked you whether certain names meant anything to you, and you said no as to certain names, which I will read off again. Now, let me ask you once again, with reference to your employment at IRC—do you get that period of time?

A. Yes.

Q. All right, do the names Peter Grant—

A. No.

Q. —Frank Herron—

A. No.

Q. —Charles Doyle—

A. No.

Q. —or Mr. Fantauzzo mean anything to you?

A. No, nothing.

Q. And the name of this individual who delivered the Sunday Worker to you was what?

A. Donald Linquist.

Q. Was he connected in any way with IRC?

A. No.

Q. Was he connected in any way with any organization that you know of, aside from the Communist Party?

A. I don't know.

Q. You don't know where he worked?

[fol. 467] A. No.

Q. During the time that you were working at IRC, and specifically during the year 1937 and 1938, if you can recall, did you have any contact with any individuals who resided in the vicinity of Rochester, New York?

A. No--yes.
Q. Can you tell us anything about that?
A. My cousin.
Q. What was the name of your cousin?
A. (No response.)
Q. Please don't tell us that you don't remember.
A. No, I do, but—Sullivan.
Q. Sullivan?
A. Yes.
Q. Where was he employed?
A. He was a contractor.
Q. Independent contractor?
A. Yes.
Q. Aside from Mr. Sullivan in Rochester, were there any other individuals, if you can recall now, whom you may have had some contact with?
A. None.

Chairman Waldman: That is all.
Do you have anything?

By Commander Dunstan:

[fol. 468] Q. Mr. Taylor, I believe that you answered one of my questions by stating that Al Morgan had never been a supervisor; is that correct?
A. No, misunderstanding.
Q. What did you say?
A. I said I wasn't sure whether Al Morgan was supervisor on the second or the first shift at that time.
Q. Do you remember him as a supervisor of yours?
A. Oh, yes,—he is now.
Q. He is now?
A. Yes. Al, he's—he's more or less above the department now, he's been promoted upstairs, but he still spends most of his time in our department.

Commander Dunstan: I just wanted to clear that point up.
Chairman Waldman: Mr. Simms?
Mr. Simms: No further questions.
Chairman Waldman: Mr. Lipsitz?

Mr. Lipsitz: No.

Chairman Waldman: Mr. Lipsitz, before you make a closing statement, do you desire any additional time to secure and present any additional evidence, or to submit a brief?

Mr. Lipsitz: Only the letter that I expected to get, and I guess because of the curse of elections I didn't yet receive it from the Erie County Board of Elections, which [fol. 469] I asked for a week to get and supply you, concerning their practice of destroying nominating petitions.

Chairman Waldman: All right, it will take us about a week to get this record anyway, so we will hold the case open for at least a week.

Mr. Lipsitz: Also I will photostat and return to you the Exhibits 1 through 5.

Chairman Waldman: Well, at the close of this hearing—in fact, we will return them to you at this time, and you be sure and send in the photostats to us as soon as you possibly can.

Mr. Lipsitz: All right.

Chairman Waldman: All right, then, you will have a week in which to send in the photostats of Exhibits 1 through 5, and the paper which you expect from the—what is it, the election—

Mr. Lipsitz: Board of Election.

Chairman Waldman: —Board of Elections in Buffalo.

Do you wish to make a closing statement now, Mr. Lipsitz?

Closing Statement by Mr. Lipsitz

Mr. Lipsitz: I will make a—I hope—fairly short one; at least it's my intention to make a fairly short one.

I'd like to divide my closing statement into two parts. [fol. 470] Firstly, I would like to address myself to the straw man that we are trying to knock down here, and that is created by the unfortunate procedure—at least from our point of view—of not confronting us with evidence that you or somebody has against Mr. Taylor, in the nature of those things set forth in the statement of reasons. I think my point has been made before, at the outset of the hearing,

and I would just like to repeat it at this time: necessarily about the only thing that Mr. Taylor can do, aside from lie, which we state most vigorously he has not done during any time of this hearing, is to come in and say, "I was not a member of the Communist Party, I never was, I never had book No. 3060, or whatever the number is, or card No. 3060, I never was in Branch B or Branch C or Branch 12, I never paid dues, and I never lied by omitting information from my PSQ's that I was a member of the Communist Party, for the simple reason that I never was."

I might say that in an effort to investigate this matter, when I was retained, in order to properly represent Mr. Taylor, I took it upon myself to visit or attempt to visit or speak with or attempt to speak with some of the very persons whose names you have been asking witnesses, whom I take to be members of the Communist Party. At least some of the reasons why I sought to speak with them were because I too had information or belief that they or [fol. 471] some of them had been members of the Communist Party.

I make this by way of explanation, because I stated that about the only thing we can do with something like your statement of reasons is to have Mr. Taylor say, "It's not true, I wasn't."

And in addition, if I could have gotten such persons to be witnesses, to bring forth such persons who might have had knowledge of these matters, in addition to Mr. Taylor, to corroborate or verify his statements, I would have liked them for that reason.

I spent a great deal of time trying to get such persons. Their failure to appear here, I think, is the result of my failure to obtain such persons as witnesses. There is no subpoena power, as you well know, and we are completely handicapped because we can't find people who are able and willing to come in and tell what we are sure would be the truth, that Taylor was never a member of the Communist Party.

I know, for instance,—or I have information—I shouldn't say I know, because I am not the witness to these things—I have information that Mr. Herron was at one time chair-

man of the Communist Party in Erie County or in Buffalo, New York. I'm sure that Mr. Taylor never knew that--at least he never knew it other than if I may have mentioned it to him in the course of your interrogations last time and this time.

[fol. 472] Mr. Herron wouldn't so much as speak to me more than about a half a minute on the telephone, when I called him and told him the purpose of my wanting to speak to him.

I am sure that I couldn't get hold of Charles Doyle, whose activities I know something about, though I never represented him in any respect. But to those of us who have made it our business to become informed in these matters in Buffalo and vicinity, Mr. Doyle is a notorious person of sorts: he was eventually deported to Scotland or England, I believe, because of his alleged membership in the Communist Party.

Mr. Connors was sought as a witness in this matter. I think it is James Connors—I'm not sure whether it is James O'Connor, or James Connors—I believe it is James Connors. There too I met with failure.

I made efforts to communicate with Svea Kate, whom I don't know personally, but who I have good reason to believe is a person who is possessed of knowledge of these things. No results from such efforts.

And I might name a few others, though it would serve no additional purpose, merely to show you how difficult and almost impossible it is, other than to bring the subject in himself, and say to you that these things in your statement of reasons just aren't true.

I have no way of knowing what Svea Kate or Frank Herron would have told me had they spoken with me, but [fol. 473] the point is that I couldn't even so much as speak with the one, or find the other.

That's the first part of what I would like to say to you gentlemen.

The second part—and I think this is more important, because I think this is something that we can deal with, and I think we have dealt with it not only in a fairly complete manner, but I am sure in a convincing manner—and

that is to demonstrate to you that the things that Mr. Taylor stood for, the things that he said, the role he played in his local union, the activities in which he engaged, that he could not have been a member of the Communist Party and still done those things. And we ask you, obviously, to believe our witnesses. We state that they have told you the truth.

True it is that not every answer to every question has been responsive; we are going back in history for some time now, and it is pretty difficult for people to remember clearly what happened as far back as 13, 14 or 15 years ago.

But we have brought you in a number of witnesses, some of whom have testified, I am sure, in a very convincing manner, to demonstrate that on those issues where Allie Brodose spoke out vigorously and pushed hard to accomplish certain objectives, often—in fact, very often,—Charles Taylor was found opposing him, not just in his mind, not just privately, but publicly.

[fol. 474] And that is significant, we believe, because I think it is rather elementary that one doesn't become and remain a member of a disciplined organization such as the Communist Party, and oppose its leaders or its advocates on matters of importance to them.

And were these matters of importance? I am sure that this Board has experience enough to know that during the years we are talking about the overriding goal and aim of the Communist Party in the United States of America was to come to the aid of Russia at that time under attack from Germany. We had common goals with Russia in that respect,—we meaning America and Russia. We too were in a war with Germany, and we sought to defeat Germany.

True it is that we didn't want to do everything as a matter of policy that the Russians wanted us to do—for instance, we didn't want to have a second front until we thought that the time was appropriate for it, whereas the Russians and their allies and friends in this country were pushing for a second front well in advance of the time that it came.

At Bell Aircraft Corporation it is undenied that there was a photograph of Joseph Stalin, which was hung and displayed in the office of the president of the corporation.

Representatives of the Russian Government were permitted from time to time to be in the plant, I assume for the pur- [fol. 475] pose of learning about the production methods, or seeing for themselves the kind of war effort that was being made at Bell Aircraft for the common cause, that is, the defeat of Germany.

It is apparent that in those years there were things that the Communists in our country were pushing for which a lot of people in the union movement opposed as good unionists; and some of those were incentive-pay plans. I don't know what opportunity you gentlemen have had to go through the records of the United Automobile Workers newspaper, which I left for your examination, if you desired, covering the years 1942 and 1943. I pointed out to you in the first hearing in this case several articles, one of which says clearly and as clearly as can be shows the position of the Communist Party in opposition to what we believe are good trade unionists on the question of incentive-pay plans. That article showed how Earl Browder wanted to get rid of Walter Reuther from the labor movement for his unyielding opposition to the installation of incentive-pay plans in any Automobile Workers or Aircraft plants.

Now, how can Charles Taylor be a member of the Communist Party and oppose its acknowledged leader—and we acknowledge that Allie Brodose was the leader of the Communist Party group at Bell Aircraft. How can he be a member of the Communist Party and oppose Allie Brodose on something like the incentive-pay plan, which was on the trade union level one of the most singly important things [fol. 476] that the Communist tried to put over in this country?

For your own information, if you haven't come across it before, in the electrical industry, which at that time was substantially organized in this country by the United Electrical, Radio and Machine Workers, at that time in the CIO, but since expelled for its Communist domination, the Communist Party was successful in a large degree in installing incentive-pay plans, so much so that today in plants that are now under contract to the CIO Electrical

Workers Union, the IUE, they are still stuck with incentive-pay plans in certain places.

And this all goes back to the activities of the Communist Party in obtaining the consent of the workers, or at least pushing the workers in those plants, to agreeing to that sort of a system.

Now, I'm not here to comment on whether an incentive-pay plan is good, bad, or indifferent. I have my own private opinions about it—Mr. Turner was asked, and he expressed his opinions. I might not even agree in every respect with the opinions he spoke of concerning incentive-pay plans.

But I suggest this as the only fair conclusion, based upon his opposition, which is a matter of record in Exhibit 4, and based upon the testimony of several people that came here and told about the stands that he took. Mr. Taylor, at the time that he was opposing piece work—and [fol. 477] it wasn't only in 1943, it was in 1942 and 1943; in fact, he says he has been opposed to it ever since he has been a worker, I guess—was coming head-on with the activity of the Communist Party in desiring to put across incentive-pay plans. And he could not have been a member of the Communist Party, or remained a member of the Communist Party, at any time that he would take a position in opposition to the incentive-pay plans.

And this, gentlemen, I suggest is a matter of the most public of public records, and one concerning which you should take some sort of notice, because nobody can deny that this was a primary goal and aim of the Communist Party in those days.

I'll address myself to another issue, the no-strike pledge. And I have the greatest respect for the attitude I inferred from the questions asked by Commander Dunstan of some of the witnesses concerning the no-strike pledge. And again, I am not here to comment on whether it was patriotic or unpatriotic to be for or against the no-strike pledge; I merely ask you to judge whether Mr. Taylor could have been a Communist or a member of the Communist Party, and take the position that he took in respect to the no-strike pledge.

Many Americans, good, loyal Americans, were all-out in favor of a no-strike pledge, to make it completely unlaw-

ful to strike in any respect during war time. I might state that the Smith-Connolly Act, if you gentlemen are not [fol. 478] aware of it, which was passed by Congress in part as a result of agitation to do away with strikes during the war, that act, even that act did not actually outlaw strikes during the war, merely created a very difficult and cumbersome machinery at the end of which it was possible for workers to strike, under certain circumstances, even during war time.

What was the attitude of the Communist Party about striking during war time? Once Russia was invaded by Germany, the attitude and program of the Communist Party—and I can only say that this is probably of equal importance, probably of even greater importance than the incentive-pay system—the attitude of the Communist Party in this country was "There must be no strikes in any plant or facility engaged in the war effort, under any circumstances." And as I state, I infer from the questions that Commander Dunstan asked, that he probably felt that it was quite justifiable to outlaw or to prohibit strikes during war time, too, and I respect his point of view, but that doesn't make Commander Dunstan a Communist, a sympathizer with the Communists.

On the other hand, how can Mr. Taylor have been a Communist and oppose such an effort? It is inconceivable that the Communist Party would accept him as a member, or retain him as a member, or want to have anything to do with him as a member if he were as vigorously opposed to the no-strike pledge as they put it across, as the testi- [fol. 479] mony of these witnesses may have made it crystal clear, that he was opposed, in the respect that the Communist Party tried to make it a part of the labor movement's program.

Mr. Leone asked some questions about John L. Lewis' strike, and Philip Murray's role. I have some familiarity with these things as a result of study and research, and I know that at the time Philip Murray, certainly never a member of the Communist Party, nevertheless was heart and soul with them in his same effort to have a no-strike pledge made unanimous by the labor movement in so far as

it was part of the CIO, in many respects. Mr. Taylor opposed that.

Now, I say that the opposition by Mr. Taylor proves that he couldn't be a member of the Communist Party. I do not of course suggest that the agreement by Philip Murray made him a member of the Communist Party. I say that where you find people diametrically opposed to the point of view of the Communist Party, however, that is the best kind of proof that we are able to give you, absent the records of the Communist Party, if there are such or if you have them, absent the testimony of actual members of the Communist Party with knowledge of who was a member and who was not a member. The best thing that we can show is that Taylor consistently and vigorously opposed the program of the Communist Party in his local union.

The culmination of this, of course—and I don't know [fol. 480] whether this coincides with the chronology of your statement of reasons or whether it is just a coincidence—the culmination of this was his actually running in 1943 to become a delegate to the UAW Convention, where one of the primary issues at that convention was "shall we or shall we not oppose Addes and Thomas?"—at that time Secretary-Treasurer and President of the UAW.

And I am not particular concerned whether they, those two gentlemen, were members of the Communist Party or not, but they were supported by the Communist Party in the literature of the union, and the literature of the time makes it very evident that they were supported by the Communist Party. Yet Charles Taylor ran in opposition to them, in favor of the opponents of Addes and Thomas. And I suggest that that makes him completely unqualified at that time to have been a member of the Communist Party.

I could go on and review some more of the testimony, but I stated I'd like to make this as short as possible. The testimony we have presented to you on issues, and where he stood, and where Brodose and the Brodose sympathizers stood, that is, those who followed the line of the Communist Party stood, shows that Taylor was on one side, and they were way over on the other side, that he never could

have been a member of the Communist Party because of that, if nothing else.

I suggest that his frank admission that he was opposed [fol. 481] to an all-out no-strike pledge should in no respect be considered detrimental or derogatory to him, especially since there was nothing in the statement of reasons which indicates that he was to be considered a security risk because he was in favor of striking, or participated in any strike activity during war time. I merely point this out because we have had a difficult time, I think, in trying to show why it is that Taylor took the positions that he did about certain things, which from certain points of view would seem to make him unpatriotic.

We do not for a minute acknowledge that there is nothing inconsistent about patriotism or loyalty to one's country, and loyalty to one's union in striving to do what is necessary to protect the rights of fellow union members.

In respect to the independent nominating petitions of the Communist Party we can only say that Mr. Taylor has come in here and told you the truth as he recalls it. He has not sworn that he has not signed such a petition; he has not admitted to you that he has signed—he just doesn't remember whether he signed or not.

But I submit, gentlemen—I make the same argument now that I have made in other matters before you involving other people from the same plant, that if the criteria or the standard of signing an independent nominating petition is going to be used standing by itself, you better, or you [fol. 482] should think a long time about the other persons in that plant who must have signed independent nominating petitions. If it weren't for the Communist Party, it could have been for the ALP, because there was nothing unusual about workers in large industrial plants signing nominating petitions for the Communist Party or for the American Labor Party in those days especially when in their own union they were asked to support the American Labor Party, for instance, which in many respects coincided, we now know, with the aims of the Communist Party.

It was not a suspect act, it wasn't an unpatriotic act, it was nothing that anybody could ever at the time have thought would be something which would be derogatory.

And I say "standing alone," because we suggest to you that the only thing we are able to say to you we admit may have happened was that Taylor signed an independent nominating petition for the Communist Party. We don't know, but we are willing, for the purposes of argument, to concede that you may have believable evidence that he signed such a petition. We find it quite difficult to believe that you actually have in your possession any such petition, because I have information that they are not only--petitions from the Communist Party, not only those but any independent nominating petitions of any political organization, are customarily destroyed. And at that time they were customarily destroyed within the year that they were [fol. 483] filed with the Board of Election in Erie County. It would be a physical impossibility for them to store all of them.

We suggest to you that this is some information that some person, the reliance of whose word you are going to have to make a determination concerning, must have told you at some fairly recent date. We say that such a person may be telling the truth—he may not be telling the truth.

Unfortunately, we will never have an opportunity under this kind of proceeding and under these rules, to test whether such a person is telling the truth or not. That is the same argument that I made concerning the alleged membership in the Communist Party.

Concerning the claim that he had a sympathetic interest in Communism, if you believe, Mr. Taylor, and we certainly suggest that you must believe him, his interest in or his knowledge of Communism, whether it be as a political party or as an economic and political philosophy, is obviously at a very minimum. It is doubtful that he really knows or understands much except that the Communist Party, or Communism, as he stated, seeks to impose its rule upon the whole world, that it is irreligious, or anti-religious, and that it does not contain a democratic political system such as we have in this country.

And of course he has denied very forthrightly that he has a sympathetic interest in those things which even his [fol. 484] limited knowledge and understanding cause him to believe Communism stands for.

There is no point in discussing the matters in the PSQ, except to say that the few errors or inconsistencies that have been pointed out—I believe mostly by Commander Dunstan—are not material, at least that we cannot understand their materiality. If he left for Burlington in 1943 or 1944, it does not seem quite material that he at one time on his PSQ stated that it was 1943, and another time 1944. He certainly has no purpose, and never had a purpose, in misstating those facts. They are a matter of company record, and available to anybody who wants them.

There was one other item on there—oh, yes, he admitted that he left out an organization that he belonged to. I suggest that that is completely immaterial, the fact that he belonged to the sheriff's organization, or something like that, and omitted to put it on.

Concerning the last item in the statement of reasons, that he may be subject to coercion, influence or pressure, which may cause him to act contrary to the best interests of the national security, this obviously all relates back to his alleged membership. He was never a member. It's a little difficult to understand how he may be subject to coercion, influence or pressure from persons or organizations, concerning whom he had never any sympathy as such, [fol. 485] or concerning which he was never a member.

What we come down to, and what we believe are the believable matters that your Board has, are that he undeniably associated himself for a certain period of time with one Allie Brodose, and perhaps, unknowingly to him, other persons who may or may not have been members of the Communist Party, but associated not in their activities as members of the Communist Party, or Communists, but only in so far as his activities in the local union were concerned.

This is the kind of thing that you and we have been up against before, if my analysis of it is correct.

And the mere association with Allie Brodose for the time that he was associated with him, and the way in which he was associated with him, are not the equivalent of saying that he is a member, or that he could ever be subject to the influence, pressure or coercion of the Communist Party.

There is one other point which we'd like to make. While it is true that Alvin Taylor—if he still exists, I don't know—was physically a different person than Charles Taylor, his build was different, his age was different, it is entirely possible that the informants that have given this information about Charles Taylor may have confused him with Alvin Taylor, and that one of the results of that is that Mr. Charles Taylor is here today. We don't know, but we suggest it to you as another possible answer.

[fol. 486] And lastly, I would like to comment a moment on the testimony of Gilbert McGovern. Now, you gentlemen, or some of you at least, I perceive, perhaps smiled at times when Gilbert McGovern testified, and I don't say this in a critical manner—he is not just a clown or a buffoon, he is a person in the local union, as he stated to you, who has made a career out of what he calls Red-baiting. And we suggest to you that somewhere along the line his so-called Red-baiting of this Charles Taylor has caused somebody or some persons to believe or give information that this Charles Taylor must have been a Communist. Gilbert McGovern's own testimony, if believed by your Board,—and we ask of course that you believe it, as we presented him and he is obligated to tell the truth—would go a long way towards explaining the origin of such matters, because he stated very frankly he never has had any basis other than the association of Charles Taylor and Allie Brodose on the one slate in the local union for calling Charles Taylor a Communist.

We conclude, therefore, by stating that we feel either that the information that is before this Board, that we are now confronted with, is untruthful information, mistaken information or otherwise unreliable. And I won't go into an analysis, because I think it would be somewhat superfluous, of the kind of evidence that this sort of procedure sometimes, unfortunately, feels it is obligated to rely upon.

[fol. 487] And I don't say this in a critical way of this Board, but I say it by way of the implicit criticism that we have of the kind of proceeding which it is felt must be conducted in these matters. The inability we have to test the veracity of the information you have makes it very,

very difficult to proceed in a conscientious and intelligent manner. We can only say that we are sure whoever gave this information about Charles Taylor was not telling the truth.

And we ask, of course, that the denial of clearance be rescinded, and that he be made eligible for access to classified military information.

Chairman Waldman: Mr. Lipsitz, subject to the receipt of the documents heretofore mentioned in the record, which will be in our possession within the next week, the hearing is concluded. And the announcement of the determination in this case will be made by the Director, Office of Industrial Personnel Security Review.

Mr. Lipsitz: And I am to get a copy of the transcript—right?

Chairman Waldman: Yes.

(Whereupon, the hearing was closed.)

[fol. 489] PLAINTIFF'S EXHIBIT No. 4

Before

NEW YORK INDUSTRIAL PERSONNEL
SECURITY HEARING BOARD
45 Broadway, New York 6, New York

CASE NUMBER: OSD 56-198

HEARING

Friday, 11 July 1958

RESPONDENT

Mr. Charles Allen Taylor
269 Wheatfield
North Tonawanda, N. Y.

COUNSEL

Joseph L. Rauh, Jr., Esq.,
Law Firm of Rauh and Levy
1631 K Street, NW, Washington, D.C.
and
John Silard, Esq., of Rauh and Levy
Also Present: Mr. Joseph Rosmyslowski

MEMBERS OF THE BOARD

Mr. Raymond A. Waldman, U. S. Army—CHAIRMAN
Mr. George D. Simms, U. S. Air Force—Member
Mr. D. M. Gilmartin, U. S. Navy—Member

SECURITY ADVISOR

Mr. Ralph Leone

[fol. 490]

Transcript of Proceedings

Chairman Waldman: Mr. Rauh, before we go into the substance of the case I have some preliminary remarks to put on the record, so if you are ready I will go ahead with that.

Mr. Rauh: We are ready.

STATEMENT BY CHAIRMAN

Chairman Waldman: This is the 11th day of July, 1958, and the New York Industrial Personnel Security Hearing Board, appointed by the Secretaries of the Army, Navy, and Air Force, is now ready to proceed with the hearing in the case of Charles A. Taylor.

This is not a court of law and strict rules of evidence and court procedure need not be followed. This is an administrative hearing held for the purpose of affording you an opportunity to be heard and to permit the Board to inquire fully into the matters related to your case.

You have the right to be represented by a lawyer or other representative and to present witnesses and other evidence in your behalf.

It is noted that Mr. Taylor appears with his attorney, Mr. Joseph L. Rauh, Jr., whose address is 1631 K Street, Northwest, Washington 6, D. C., and who is of the law firm of Rauh and Levy.

Is that right, sir?

Mr. Rauh: That is correct. In addition, Mr. Taylor is represented here, as my assistant, by Mr. John Silard, of [fol. 491] our firm, and Mr. Joseph Rosmyslowski, who is acting as one of our assistants for the purpose of cross examination of any informant that may be produced. He is the representative of the union that seems to have the best memory of the events in 1942 and 1943, so we are asking that he be allowed to assist me, too, in this cross examination.

Chairman Waldman: Certainly if the purpose is to assist you in your presentation of this case we will permit him to be present.

Mr. Rauh: Thank you, sir.

Chairman Waldman: You can assist this Board in arriving at a fair and just determination in this case by giving full and frank answers to all questions the Board may have and by confining your attention to the matters related to this case.

The transcript to be made of this hearing will not include all of the material in the file of this case in that it will not include reports of investigation conducted by any of the investigative agencies of the government which must be held in confidence. Neither will it contain information which might reveal the identity of confidential informants or the source of confidential evidence. The transcript will contain only the statements made, testimony given, and exhibits received in open sessions of this hearing. A copy of this transcript, less exhibits, will be furnished you or your representative without cost if you request it.

[fol. 492] Mr. Rauh, will you note for the record whether or not you desire a copy of the transcript being made of this hearing.

Mr. Rauh: Please, we would very much like to have one.

Chairman Waldman: On November 1, November 2, and November 14, 1956, a hearing was conducted by the New

York Industrial Personnel Security Hearing Board in the matter of Charles Allen Taylor.

Under date of June 14, 1957, Mr. Taylor was advised that access to classified defense information for him was not clearly consistent with the interests of the national security.

Under the provisions of paragraph 22 c (3) of the Industrial Personnel Security Review Regulation, Department of Defense Directive 5220.6, dated February 2, 1955, counsel for Mr. Taylor requested the Secretary of Defense to reverse the determination announced by the Director, Office of Industrial Personnel Security Review.

As a result, counsel for Mr. Taylor was advised that Mr. Taylor could request a hearing before the New York Industrial Personnel Security Hearing Board and that further proceedings would be permitted in his matter.

Now, that short chronology I believe, Mr. Rauh, takes us up to date on what has happened heretofore, aside from the fact, of course, that there has been numerous correspondence in this matter, which is in the file.

Our information is to the effect that about a week ago, [fol. 493] Mr. Rauh, you called the Executive Secretary of this Board, requesting a hearing on the first available date.

You also advised that you had to be present here on Thursday, July 10th, for another matter, and you were given this date, Friday, July 11th, for this hearing.

It is the information of this Board that you were informed that an attempt was being made by the Government to procure further information for the use of this hearing but that it was not known at that time whether such efforts would be successful.

The present status is that efforts by the Government to procure further information are as of this date not concluded. Our information is that they should be concluded within the next week or ten days.

Accordingly, if no further information is procured by the Government this case, after today's hearing, will receive a speedy determination. If further information is procured by the Government which can be furnished to you, as formerly indicated, you will be so advised without delay.

With these facts in mind, are you ready to proceed at this time?

Mr. Rauh: Well, I think a more detailed factual statement is required, and I was waiting until you put the amended statement of reasons in to make mine.

Don't you want to put your amended statement of reasons [fol. 494] into the record?

Chairman Waldman: I will if—

Mr. Rauh: I will make my statement now.

Chairman Waldman: You can make your statement now and I will put the amended statement of reasons in if it is required.

STATEMENT BY COUNSEL FOR RESPONDENT

Mr. Rauh: In September of 1956 Mr. Taylor was served with charges to the effect that he had membership in the Communist Party in 1942 and 1943, and may still have.

On November 1, 2, and 14, 1956, he appeared at a hearing before this Board. I believe the members are identical, with the exception of Mr. Gilmartin, who is substituting for Commander Dunstan.

Chairman Waldman: That is right, sir.

Mr. Rauh: At this hearing he was refused confrontation by his accusers. Despite the difficulty of proving a negative, and proving one so long past, Mr. Taylor produced at the hearing not only his sworn testimony but also the testimony of eleven witnesses, demonstrating conclusively that he was, far from being a Communist, he was an anti-Communist in the period in question and, of course, since.

Notwithstanding these circumstances, on June 14, 1957, Mr. Taylor was advised he had been denied clearance.

On November 22, 1957, the undersigned, having been retained as counsel by Mr. Taylor, wrote the Secretary of Defense, detailing the incredible injustice which had been [fol. 495] done Mr. Taylor, and requesting a reversal of the decision denying him clearance as quickly as possible.

The office of the General Counsel of the Secretary of Defense was advised by the undersigned that an expeditious determination was requested so that Mr. Taylor could, if necessary, pursue his remedies in the courts.

No reply was received to this request whatever. On June 23, 1958, we telegraphed the Secretary of Defense, "requesting an immediate response by you as to when we may have an answer to our letter of November 22nd"—I said June 23, and my attention has been called to the fact that it is January 23.

Thereupon, on February 3, 1958, the General Counsel of the Department of Defense informed us that "the record reflects that the determination to deny clearance was reached after giving careful and deliberate consideration to all the evidence. The conclusion reached from this review is that the adverse determination is neither arbitrary nor capricious but is, on the contrary, reasonably supported.

"However, although it does not appear that the adverse determination should be reversed on the basis of the present record, yet it is believed appropriate in this instance to reopen the case and obtain any additional information that may be available."

The letter concluded by stating we will hear from them within two or three weeks.

[fol. 496] We didn't hear in two weeks or three weeks, we didn't hear in two months or three months, and on April 24, 1958, we brought suit in the Federal District Court seeking to remedy the incredible injustice done Mr. Taylor.

Some six weeks after we brought the suit we received a letter from the Secretary of Defense.

The Chairman's statement that this hearing here results from our request is incorrect. We did not request this hearing in any way, shape or form unless there was to be confrontation of Mr. Taylor by his accusers. We asked the Secretary not for a hearing but to reverse the almost incredible decision holding against Mr. Taylor after his sworn testimony and that of eleven associates.

We did not ask him for a further hearing. We asked him on this record to reverse. Instead of reversing, this letter we received on June 5, dated May 30, affirms the action, reaffirms the action by saying it was reasonably supported, and then says there should be further proceedings.

The only possible reason for reaffirming the action of this Board and holding further proceedings is to delay the matter in court.

By letter of June 19th you, this Board, transmitted an amended statement of reasons, and I would suggest that at this point that amended statement of reasons be put into the record.

[fol. 497] Chairman Waldman: Yes. The reason it was not put in before, Mr. Rauh, was because I wanted to make you aware of the fact that we still are in a status where our investigation, as far as we know, has not been completed.

With that in mind, we will at this time put the amended statement of reasons into the record.

Now, I can either read it, or we can put it in by stipulation.

Mr. Rauh: Let's do it by stipulation.

Chairman Waldman: All right. Then at this point in the record the reporter will insert the amended statement of reasons* which was furnished to Mr. Taylor and Mr. Rauh by letter of this Board of June 19, 1958.

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[fol. 498]

Mr. Rauh: We received the amended statement of reasons that will be typed into the record above my statement I am now making, I believe the following day, which was June 20th.

We immediately responded, that is, by letter dated June 25th, enclosing the reply to the amended statement of reasons, which is sworn to by Mr. Taylor, and at this point I would suggest that the transcript include our letter of June 25th and the reply to amended statement of reasons,** sworn to on June 24th by Mr. Taylor, in full.

Chairman Waldman: All right. Then the reporter is instructed to insert at this point in the record the letter to T. L. White, Executive Secretary, on the stationery of Rauh and Levy, dated June 25, 1958, and the reply to amended statement of reasons subscribed and sworn to by Charles Allen Taylor on the 24th day of June, 1958.

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[fol. 499] Mr. Rauh: The reply to the amended statement of reasons and our letter both contain the statement that

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* See pages 68-75.

** See pages 75-79.

"if your Board proposes to confront me"—meaning Mr. Taylor—"with my accusers or otherwise to produce evidence at a hearing in support of the charges, I desire a hearing. If, however, your Board cannot or will not do so then I do not desire what would not in fact be a hearing and would serve no useful purpose because the amended statement of reasons includes no new material allegations and [fol. 500] because I have heretofore produced overwhelming persuasive evidence of the falsity of the charges against me."

On July 1, 1958, I received a letter dated June 30, 1958, from Mr. White, which I suggest be typed into the record at this point.

Chairman Waldman: All right. The reporter will type in at this point in the record the letter of June 30, 1958,* from this Board to Joseph L. Rauh, Jr.

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[fol. 501]

Mr. Rauh: The third paragraph of that letter states in part, "The Department"—I take it meaning the Defense Department—"does not make it a practice to reveal the names of Government witnesses which it may intend to produce in advance of a hearing, nor is it prepared to state as a matter of fact whether any witnesses will be available in the instant case at the time of hearing."

This is a remarkable statement. This is a statement on June 30, 1958, two years after the beginning of this proceeding in which this Board tells us that they are still not prepared to tell us yes or no that we will receive confronta-[fol. 502] tion. It is the most remarkable statement until the one this morning when you told us now, even 11 days later, that you are not prepared to tell us whether we will receive confrontation.

Since, however, the letter from Mr. White does not say categorically we are not to be confronted by the accusers, I had no choice but to pick up the telephone and ask him for a hearing on the first available date, which is today.

In this conversation—and I am sure Mr. White will confirm this—he made no suggestion whatever that this hear-

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* See pages 86-88.

ing might be delayed or continued, or that a decision would not be made at this hearing, or whether we would have confrontation. On the contrary, in this conversation, he told us it was clearly intended that there would be a hearing at which we would either be told no confrontation, in which case that is the end of it, or we would be confronted.

Not knowing whether we would be confronted or not, we are here prepared to cross examine our accusers.

Then subsequently, not on July 1, when this hearing was set, but on Tuesday of this week, which is the 8th of July, I called Mr. White and I said to Mr. White--and I am sure he will confirm this—"Look, as a personal matter of convenience on whether we are going to get to cross examine and prepare for cross examination, will you tell me whether you are going to have the accuser there?" He said "I will call you back."

He did call me back, and he said, "Mr. Rauh, I cannot [fol. 503] tell you because I don't know. I must inform you that there is a possibility that we will not know even then."

So the statement that was made is correct in the sense that prior to the time I came here I had been informed that you might not know at this time, but I had, at the time of setting the hearing and agreeing to this date, been informed that the hearing would be today.

We are here prepared to cross examine the accusers. Now, from the Chairman's opening statement—well, excuse me. Before I get to that I would like the letter from Mr. White to go in dated July 1, 1958,* to me confirming the telephone conversation of that date.

Chairman Waldman: All right. The reporter will put in the record at this point letter of July 1, 1958, from the Executive Secretary of this Board to Joseph L. Rauh, Jr.

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* See page 88.

[fol. 505]

PLAINTIFF'S EXHIBIT No. 5

Before

NEW YORK INDUSTRIAL PERSONNEL
SECURITY HEARING BOARD
45 Broadway, New York 6, New York

HEARING

Friday, August 1, 1958.

RESPONDENT

Charles Allen Taylor

COUNSEL

Rauh & Levy, Esqs.,
1631 K Street, N.W.,
Washington, D. C.
John Silard, Esq., of Counsel.

MEMBERS OF THE BOARD

Mr. Raymond A. Waldman, U.S. Army—CHAIRMAN
Mr. George D. Simms, U.S. Air Force—Member
Cdr. Daniel Gilmartin, U.S. Navy—Member

SECURITY ADVISOR

Mr. Ralph Leone

[fol. 506]

Transcript of Proceedings

OPENING STATEMENT BY CHAIRMAN

Chairman Waldman: This is the 1st day of August, 1958, and the hearing in the case of Mr. Charles Allen Taylor is reconvened, pursuant to notice to Mr. Joseph L. Rauh, Jr., under date of July 29, 1958.

The members of the Board who are present on 11 July, 1958, are again present this morning, namely, Mr. Simms, Mr. Gilmartin and myself, Mr. Waldman; and the Security Advisor, Mr. Leone, is likewise present.

It is noted that neither Mr. Taylor nor Mr. Joseph L. Rauh has appeared for this reconvened hearing; however, a representative of Mr. Charles Taylor, and the attorney who was present at the last hearing with Mr. Rauh, and whom I assume is a member of Mr. Rauh's firm—is that right, sir?

Mr. Silard: That's right.

Chairman Waldman: —is present today, and he is Mr. John Silard, of the law firm of Rauh & Levy, whose offices are at 1631 K Street, N.W., Washington, D. C.

Aside from Mr. Silard, no other person representing Mr. Taylor is present in this hearing.

At this point, in order to reflect what has transpired since the adjournment of this hearing on July 11, 1958, the following communications will be set forth in the record:

A letter dated July 23, 1958 from the Executive Secretary [fol. 507] of this Board to Mr. Rauh, notifying him that it was the Board's intention to reconvene the hearing in Buffalo, New York, on July 31, 1958, in order to receive testimony from two Buffalo witnesses and to accomplish other stated purposes;

A telegram dated July 29, 1958, from the Executive Secretary of this Board to Mr. Rauh, notifying him that his offer of July 25th to stipulate the facts to which the Buffalo witnesses had been expected to testify had been accepted, that the July 31st hearing date accordingly had been cancelled, and today's hearing session scheduled to accomplish the remaining purposes of this hearing;

A telegram dated July 30, 1958, from Mr. Rauh to the Executive Secretary of this Board accepted the proposed August 1st hearing date, and which telegram posed certain questions;

And a telegram dated July 30th from the Executive Secretary of this Board to Mr. Rauh, replying to Mr. Rauh's questions and confirming that the hearing will be reconvened today as scheduled.

Mr. Silard: Mr. Waldman, I think you neglected to mention the July 25th letter to Mr. White from Mr. Rauh —that is, you did mention it, but you did not say that it would be set forth. Will that be included?

Chairman Waldman: I mentioned it, and it will be set forth in the record.

[fol. 508] Mr. Silard: Fine.

Chairman Waldman: Now, from time to time in the course of these proceedings repeated demands have been made upon the Hearing Board for disclosure of information which the Board was required to maintain in confidence because of the national security limitations imposed by paragraph 4 of the review regulation. And because of these demands and the Hearing Board's responsibility to ascertain all the facts, the Hearing Board has made repeated inquiries and requests designed to enable it to present living witnesses or to present information of an evidentiary nature other than through living witnesses. In a measure these attempts have been successful. For example, two witnesses living in Buffalo were going to be presented by the Board, but such presentation was made unnecessary by the stipulation offered by Mr. Taylor's counsel, and which was accepted by this Board.

A further measure of success has been achieved, in that the Board is now in the position to place in the open record the following information of an evidentiary nature:—

Mr. Silard: Mr. Waldman, may I make an opening statement before we do put anything like that in the record? It will be rather brief, but I think—

Chairman Waldman: If you let me finish my sentence, I will let you make an opening statement.

[fol. 509] Mr. Silard: Sure.

Chairman Waldman: And as this Board has previously notified Mr. Rauh, the Board is prepared at this time to place certain information of an evidentiary nature in the record.

Now you may make an opening statement, if you desire, sir.

Mr. Silard: Please.

Mr. Waldman, and gentlemen, I think there has been some confusion for quite some time as to what it is that we are here for at this hearing today, and the previous hearing. As you know, Mr. Taylor was denied a security clearance. He requested that the Secretary of Defense reverse that determination, because the charges are false, he denied them at length, produced 11 witnesses who corroborated his denials, and there was no other evidence produced of any sort.

It was not until we filed a complaint in Federal Court, however, that the Secretary of Defense advised us that he had reversed the ultimate determination to deny clearance, and remanded the case for further action.

Amended charges were filed by this Board, which are identical to the original charges, with only two material exceptions: one, whereas the Board had charged originally that Mr. Taylor had been a member of the Communist Party [fol. 510] in 1942 and 1943, and may still be a member, the new charges allege that he was expelled from the Party in 1943. Since of course Mr. Taylor denies membership in the Party, and has testified at length and produced evidence at length on it, it is immaterial whether you allege that he was expelled or not expelled, since he was not a member.

And the other respect in which the charges have been offered is that this Board now charges him with lying in declaring his innocence of the charges. And I think we have already noted that this is the first hearing, to our knowledge, in this country, where a man is being judged by his accusers, who accuse him on secret evidence, of lying in denying his guilt.

Now, we answered the amended charges, and at the conclusion of our answer we made the following unequivocal and unmistakable statement:

"Your letter of June 19, 1958, requests a definite statement as to whether you desire a hearing." Now, we answered as follows:

"If your Board proposes to confront me," that is Mr. Taylor—"with my accusers, or otherwise to produce evidence in a hearing in support of the charges, I desire a hearing. If, however, your Board cannot or will not do so, then I do not desire what would not in fact be a hearing, and would serve no useful purpose, because the amended [fol. 511] statement of reasons includes no new material allegations, and because I have heretofore produced overwhelming persuasive evidence of the falsity of the charges against me."

We were then advised that the Board could not tell us whether it would produce accusers or evidence at a hearing, and that the only way to determine that fact would be to request a hearing. That compelled us to request a hearing.

After some more delays we appeared at the hearing, and there were no accusers here and there was no evidence here. But the Board said that it was not yet completely satisfied that there might not be some evidence or accusers available, and the hearing would be continued.

At that time we asserted our unequivocal position that we do not desire to be confronted with evidence on things that we admit, we do not desire to be confronted with accusations. The charges are the same—there is a voluminous record on them—as the former charges. What we desire a hearing for is to be confronted with evidence or accusers on matters that are denied. And Mr. Rauh concluded the hearing here with the following words:

"We leave this hearing with the one request that prior to July 24th we either face our accusers, and you make the decision on that, or you make the decision on the present record."

We never asked the Secretary of Defense for the kind [fol. 512] of hearings we have had up to date. We have asked him for fair hearings, at which our accusers would be produced. They have not yet been produced.

Then we were advised that two witnesses were to appear in Buffalo to testify to what has been conceded. I think, gentlemen, it is quite obvious that we don't desire to have testimony produced that Mr. Taylor worked at Bell Aircraft or that he is a machinist or that he lived where he

concedes he lived a few weeks in '42. We want to know the evidence or face the accusers on matters that are denied. And so we gladly stipulated what those two witnesses would testify.

Now, our patience is inexhaustible, gentlemen, and we come every time to a hearing where it is indicated that there is any possibility that we will have what we conceive to be the essence of a fair hearing, that is, we will have production of the evidence of the accusers against us.

Now, your telegram which evoked our appearance at this hearing, which I don't believe we requested, unless it is a hearing to confront us with evidence or accusers, your telegram advises us that information will be read into the record. Now, lest there be any doubt as to what it is that Mr. Taylor wants a hearing for, we don't want accusations read into the record, we have got plenty of accusations. We don't want matters read into the record that are con- [fol. 513] ceded. We want to be confronted with evidence; that means documents, materials and witnesses. That is what confrontation has always meant in the American legal system, and that is what we desire.

However, as I stated, our patience is inexhaustible, and in the hope that, 23 months after this case was in approximately the same posture that it is today, possibly we will be confronted with evidence, we are here today.

May I say that Mr. Taylor is not here because our financial resources are limited, and all these additional hearings—here last time, the one scheduled in Buffalo, and the one here today—are beginning to make us believe that there really are not going to be any accusers presented and no evidence with which we are going to be confronted. But if this Board should produce today evidence which is subject to denial, examination, rebuttal, then of course I will request opportunity to study that evidence, to adjourn the hearing, produce witnesses, produce rebutting evidence, which of course would be our right.

And as I say, I am sorry we can't have Mr. Taylor here, but our finances are limited.

And so I make only this request: 1, that you understand what it is that we have requested a hearing for, which does not seem to be the same as what you believe we have re-

quested a hearing for; and 2, that if we are going to have [fol. 514] evidence produced, which is what we desire, not accusations, then you will give us the opportunity to adjourn this hearing to produce rebutting evidence.

That is all I have, Mr. Chairman.

Chairman Waldman: Mr. Silard, of course you will be furnished a copy of the transcript of whatever transpires here today; you will have an opportunity to examine it, and of course to give us any comment that you desire to make on it. We will never preclude you from doing that.

As we gathered from the letter of Mr. Taylor in reply to the statement of reasons, he asked for the confrontation of witnesses or otherwise to produce evidence at a hearing. And in Mr. Rauh's closing remarks on the day of July 11, 1958, and I read from page 48,* Mr. Rauh said:

"If your Board proposes to confront me with my accusers or otherwise to produce evidence in support of the charges."

With regard to the latter part of his statement, "or otherwise to produce evidence in support of the charges," we feel that we are complying to the extent possible under paragraph 4 of the review regulation. If you have no objection, Mr. Silard, I would like at this time to place in the open record the following information of an evidentiary nature:—

Mr. Silard: I will reserve my right to object till I know [fol. 515] what the material is, Mr. Waldman.**

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[fol. 516]

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Now, at this time let's have a few-minute recess—

ALTERNATIVE MOTION TO STRIKE OR TO LIMIT THE USE OF THE INFORMATION OF AN EVIDENTIARY NATURE INTO THE RECORD AND OVERRULING THEREOF

Mr. Silard: Before we do that, Mr. Waldman, may I ask first—I would like to make a short motion, it will just take

* Printed at page 93.

** Printed at pages 102-104.

a moment. I am not clear of the purpose of the reading of this information of an evidentiary nature into the record. Of course it is evidentiary, possibly, to the members of the Board, but to us it is just an accusation, not evidence. And I will move that the matter either be stricken from the record, for the reason that, of course, it is accusation and information which is unchallengable and untestable—we don't have this material, we don't have the accusers, we don't have this evidence—or, in the alternative, if it is not [fol. 517] stricken from the record, that no consideration be given to this material as evidence, for the reason that we are unable to rebut, examine or adequately to prepare a defense against what are allegations and accusations, rather than evidence.

And that is my motion. It is an alternative motion, Mr. Chairman, either to strike or to limit the use of the material which was read into the record.

Chairman Waldman: With reference to the motion to strike, Mr. Silard, that motion is denied.

And of course your remarks are on the record.

With reference to your motion to limit the use of this material, and any consideration that we may desire to use it for, that motion of course must be denied. But the record will note that we recognize that in evaluating and weighing all this information, that Mr. Taylor has not been informed as to confidential sources of the information and that Mr. Taylor has not had the opportunity to cross-examine them, and we of course will give them such weight in considering them as they merit in view of these factors.

Now, at this time, Mr. Silard, it may be well to take a few-minute recess. I will have the reporter read to you at your convenience all of the information I have read on the record.

(Recess had.)

Chairman Waldman: Mr. Silard has requested that if [fol. 518] possible the information which the Board considered of an evidentiary nature be typed up and furnished to him, so that he can have an opportunity to properly examine it. The request is granted. The reporter will type

up this information for Mr. Silard, and we will take a recess until one o'clock, at which time we will reconvene.

(Whereupon, the hearing adjourned until 1:00 o'clock, p.m.)

[fol. 519]*
[fol. 519A] (Recess had.)

COLLOQUY BETWEEN CHAIRMAN AND COUNSEL

Chairman Waldman: Mr. Silard, you have propounded more than a hundred and fifty questions, which this Board has been attempting to consider in the recess. Considerably more time will be required to properly comply with your request for answers to these questions. Accordingly, we consider it necessary that the hearing be recessed, to be [fol. 520] reconvened at the call of the Board, and we will give you due notice as soon as we are in a position to resume.

Mr. Silard: Well, I can't control how the Board wants to proceed, Mr. Chairman, but I would suggest this: It has been quite obvious for a number of months now that we have been trying to get speed in these hearings, which we didn't request. And I would like to reiterate my statement this morning that we haven't requested this hearing, and we don't desire to be told about accusations and allegations, but to be confronted with evidence.

The Board persists in presenting us with what we are really not interested in; however, having presented it, we certainly would want to avail ourselves of every opportunity to get as much realistic information as we can.

Now, nothing we have had to date this morning enables us in any way to add to our defense, because these are unnamed persons and these are unavailable documents.

I would therefore suggest, Mr. Chairman, that unless the Board is still thinking of producing live witnesses—and I take it the Board is not considering that, because we have

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* See pages 104-114.

gone through that a number of times now—and unless the Board is still thinking of producing live evidence—and I take it that is not still under consideration—that rather than have to bring us here again—and this is expensive for us, and burdensome—that the Board submit in writing [fol. 521] answers to as many questions as it can answer, and those that it can't, of course it can't. That would leave us the opportunity to ask further questions. We might want to do so, although I doubt it. But at least it would save us the burden of having the continual hearings, and the expense. And frankly, if all that the Board now proposes to do is to answer these questions, I don't think it will be necessary to have the hearing itself reconvened, unless the Board changes its position and now produces names and informants, which we would love to have. But unless it were to do that, I don't believe that there is anything we could produce tangible that we haven't already produced in answer to the charges.

Nevertheless, we would like answers to these questions, and I suggest that the Board consider, rather than recessing today, if it is a matter of the Board having finished its case but for the answers to these questions, that they be submitted in writing, and put in as part of the record.

Would that be agreeable with the Board?

Chairman Waldman: Mr. Silard, I don't see how you can have your cake and eat it, too. I mean if you would like to withdraw the request for these answers, we can come to some conclusion as to what to do today. But if you have these questions on the record, we have no alternative but to go into them and to consider them and try to give you [fol. 522] answers to the best of our ability.

Now, it is impossible to do that today.

Mr. Silard: Well, I say, Mr. Chairman, we would like the answers, we would be perfectly happy, rather than having the burden of continued appearances here, but to have them put in in writing and put in as part of the record. And I would be prepared in that case to finish the case today, leaving the record open for the answers.

Chairman Waldman: Mr. Silard, is it your statement to the Board that once you got the answers, that you wouldn't

have any reason to reply to them or take any further action, and that you would want the case closed after we give you the answers, without giving you the opportunity to see them—

Mr. Silard: If we desire—

Chairman Waldman:—and address us again, if you desired?

Mr. Silard: If we desired to do that, we would certainly ask the opportunity to do so, but chances are we won't; and rather than leave us here for another formal appearance, at which possibly the answers would be read, and nothing else would happen, we would be willing to let this hearing end now, and the whole record stand as it is, subject to the completion of answering of so many of the questions the Board can answer in writing, and subject to our reserving [fol. 523] the right upon receiving the answers to ask the Board to produce further evidence.

But the difficulty that we are under here is that of continual postponements, and they are very burdensome to us, and they jeopardize our right to proceed with the case in the District Court, and we don't by any means want to do that; and therefore we ask that the record ought to be closed and the case submitted, subject to only two things: the receipt by us of so many answers as the Board may give in writing, and reserving our right upon their receipt to ask for one more hearing, if we find it necessary. I am afraid we will not find it necessary, but at any rate we would reserve that opportunity.

What we don't want is the necessity of coming back here to be given a few answers which are not going to be helpful, and end the hearings having done no more than that, but having had to come back here once more, and having had to have the unavoidable delay that would attend that method of operation. And so I do request that the case be closed as of now, and I will be permitted to argue it, with the reservation that the Board's answers, as many as can be given, will be put in in writing and submitted to us, and that we will reserve our right upon that occasion to ask for another hearing, if we find it necessary.

Chairman Waldman: Let's take about a five-minute re-
[fol. 524] cess.

(Recess had.)*

[fol. 525]

Mr. Silard: May I say first that we are not disappointed with what happened here today, because it is what we expected; that is, we have not been confronted with any evidence, documentary or otherwise, or witnesses, and I take it we are never going to be. I think that much is clear, and if I haven't made it clear throughout this hearing we will still want to face our accusers and to see the evidence, I will make it clear again now. But I don't believe that is necessary, I think the Board has ruled many times on that request.

Furthermore, what we have been saying in voluminous correspondence concerning these hearings is to some extent substantiated further by what happened today. We have never asked for a hearing and we have never asked for a reversal by the Secretary of Defense merely so that this Board could provide facts to buttress the government's case in court, but facts which don't in any way to improve our case, because they don't permit us to buttress our [fol. 526] defense in any manner whatsoever. Nothing happened today but a reassertion of the allegations of the complaint in an informational form, "Somebody said that you were a member, somebody said that you got out."

Well, we presumed that somebody had said that Charles Allen Taylor was a member, we presumed that someone had said that he got out, or was expelled from the Communist Party, we presumed that there was some basis for the information, for the allegations of this complaint in this case two years ago and now, and what we have had today is merely a somewhat more particularized form of those allegations, but they are substantially the same. And they have been denied at length.

It seems to us that as far as we are concerned the first so-called reversal of the first determination by the Secre-

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* See pages 114-115.

tary of Defense, which reversal he took notwithstanding that the record substantiated the action that had been taken, has had no purpose but harassment or delay, whatever you want to call it. Nevertheless, hope springs eternally in our breasts, and I am going to make a concluding argument to you gentlemen in the supposition that there is some good faith behind this new set of hearings, which are unprecedented to my knowledge in the security program, that there will be a de novo determination by this Board on the charges, that it is going to think them through again, and [fol. 527] going to try to conclude again fairly whether Mr. Taylor is a security risk.

And therefore I will address myself to the evidence. I am not going to relate it, because I am certain that you are all completely familiar with it. You are familiar with the fact that 11 witnesses came here, including Mr. Taylor, who was the 12th, and denied these charges, produced evidence that he had always been anti-Communist, and what-have-you.

But I don't think there is any point in reiterating those.

Rather than do that, gentlemen, I want to do something that has not yet been done in this case. And quite frankly, I am being quite honest to you, I didn't see the answer to this case until I saw two pages put in the record this morning. I think I know what happened in the Charles Allen Taylor case as well as anyone can know it, and I am going to suggest this to you. You have the power to think this theory through, presumably with more evidence before you than we have. You have the power to test it against the evidence you have. And you have the power to call for more evidence on it.

The outstanding thing here, gentlemen, if you will note it, from our point of view, assuming now that some of these charges are true, that some of these double, triple and quadruple hearsay assertions have a foundation in fact, [fol. 528] assuming that, I say, from our point of view the astounding thing is this:

After I don't know how many years of investigation, and after what appears to have been a rather thorough reinvestigation of six so-called informants, only two actually

purport to have information on the gist of the case, that is, membership in the Party.

You will note that the first and the fifth confidential sources seem to indicate some degree of personal familiarity, and to be producing some degree of presumably believable records on the issue of membership in the Party. That is not true of the second, the third, the fourth, and the sixth sources.

The sixth doesn't really bear on the Communist Party membership. The second is a kind of a vague piece of information that doesn't take you very far. The third is expulsion, as is the fourth, and I assume that those confidential informants did not testify to membership.

So I say there are two informants, or there appear to be two informants, there have been two informants who produced the information that you relate in the first and the fifth provisions.

Now, as I say, the astounding thing is this: Here is Charles Allen Taylor, presumably a member of the Communist Party for almost two years, and after all this re- [fol. 529] search only two persons have come up to testify to or to relate at first and second or third-hand to whatever it is they related in the first and fifth provisions here. Where are the others, gentlemen?

Is it possible that Charles Allen Taylor was really a member of the Communist Party, and no one else could be found to verify that fact?

Now, I don't know how many people have been investigated, but I presume a great many have been asked about Charles Allen Taylor, and I believe probably every known member of the Communist Party in the area at the time has been approached, if there was any likelihood of his having information; and yet after all this only two people turn up who testify to what they knew.

And I am going to talk about what they testify about, because I think I have a theory that explains it. Not only that, but no one, as far as we can tell, has ever come up with a single piece of information or evidence that Charles Allen Taylor ever spoke favorably about Communism, or espoused the Communist ideology, or associated

himself in speech with the Communist Party. In other words, if this is all the information, essentially, that is here—and I think the charges and this information do reflect clearly that there is no information before this Board that any person ever heard Charles Allen Taylor speak the way a Communist speaks, or espouse Communist [fol. 530] ideology or call himself a Communist or praise Communism—and this, gentlemen, even more than the fact that there are only two—no more than two witnesses testifying or relating the material on the central allegation, this complete absence of the characteristics of a Communist, is to me very significant. Because I don't believe that, with the people who have been investigated, if Charles Allen Taylor had knowingly been a member of the Communist Party, he could have been that and yet have been not only the kind of fellow that 11 witnesses came here and testified to you about, loyal, unconcerned with international matters, an individualist, never talked about Communism, read no Marxist literature, had none in his house—all this is in the record—I say he cculdn't have been the fellow that those 11 people described, and he couldn't have been the fellow who was knowingly a member of the Communist Party, as to whom the government hasn't found an iota of evidence of Communism expressions and sympathies, philosophies, even familiarity with what Communism is about.

Now, I say, gentlemen, in this context—I have thought about this case—in this context, here is a fellow who just doesn't fit the cloth, who just doesn't fit the pattern, who is completely unlikely as a fellow who gives up his own point of view and joins a cause like Communism—he just couldn't be that fellow, if those 11 people were testifying truthfully, [fol. 531] and he couldn't be that fellow if the government hasn't found a single statement by him indicating that kind of sympathies, and I don't believe it has. He couldn't have been that fellow.

Well, then, we are back to this problem, gentlemen: If that is true, what is all this information about? I don't know whether it is second, third or fourth hand, I don't know whether there is a mistaken identification. I don't know whether witnesses are lying.

But I will assume this for the moment, and I want you to assume it: assume that whoever has testified about Charles Allen Taylor and about these books and cards was not lying on purpose; assume that there is not a mistake in identification; and assume that this information that is given here was the truthful expression of what these witnesses believed. Is there any way to explain what then appears to be an utter contradiction, a fellow—you saw him sit here, you saw him testify, you saw the people who described him; he is just not a Communist Party character, not now and he wasn't then. It is just completely alien to his personality.

How do you reconcile this situation? Well, I have a theory, and I am quite familiar with this case, I have worked with it for almost as long as this Board, and I know the facts very well. And I offer this theory because I think Mr. Taylor is entitled to have this Board consider [fol. 532] what may be perhaps a hunch, perhaps no more than a hunch, but may be the real explanation of this.

If you will read the record, you will find that Mr. Taylor came to this country from Canada at a fairly young age. I don't think there is much about his background in the record, though possibly your record reflects it. He came out of a family, of a background that was totally unideological, certainly not any Communist ideology, just wasn't that kind of a man.

He came to Bell Aircraft, and he got interested, very interested, in union matters, and I think this is clear on the record, too, that he was one of the most active people in local union problems that the union had, in 1942, in 1943 and thereafter. He was more involved in those local union issues than anybody else around, or if not anybody else, he was one of the leaders.

For instance I notice the record shows that he had the highest vote of anybody in the union as the UAW delegate in 1943, he polled the highest in the union, because he was well liked, he was a likable guy, he was then and is now. He was a simple kind of guy, and he was a fighter for the things he believed in, which were good conditions for members of the union, good conditions of work, decent pay, and all the rest of that. And he may have been more dili-

[fol. 533] gent in fighting for it than many more union members.

He came to it, I say, with this personality and these interests. I suggest that in 1942 he fell under the influence of a fellow called Brodose, who was then the head of the local union, under whom many people worked who are now working at Bell Aircraft, on whose slate many people were who are now at Bell Aircraft. In fact Maturski, who threw him out in an Communist-anti-Communist fight a year later, was his vice-president. So I see nothing reprehensible in Charles Allen Taylor, like Maturski, like everybody else, having joined the local union, sought office, even though the president of it at that time was Brodose.

And furthermore, it is clear that Brodose was not known as a Communist Party member in 1942, that the discovery that he was a CP member and active for the CP came in 1943, some time in the spring.

And then the *Maturski slate* got formed, ran on that issue of Communist-anti-Communist, and you have that history in the record. So I say there is nothing suspect or reprehensible in Charles Allen Taylor having joined that organization.

And there was one witness—and I don't have his name at the tip of my tongue at the moment, but you can find it in the record easily—there is one witness who gave what I think is the most significant testimony in this record; he [fol. 534] said, referring to himself, this witness, "I was in the same caucus, was in the same group with Brodose. So was Taylor. But Taylor wasn't as far inside as I was inside. And I was pretty far inside with five or six people who ran that caucus, and the union at the time. And I know,"—and all this I recall on the record, and you can find it there—"and I know," said this witness, "that that was a Communist Party operation, as far as those five or six people were concerned, those—the core of the Brodose unit. For them this was Communist Party. They weren't that way openly, but they knew who they were, each one of them was, they knew what they were trying to run the union for, that is, Communist Party policies, and they set up these meetings."

And this witness' testimony is very interesting, and I think it fits into what I am saying, because it points out in more detail than I have given you now that this is really a two-fold operation. There was a fairly large group, maybe 15 or 20 people, who were in the local union, who were in this caucus and worked with it; but within that group there was an inner circle, and it was in the inner circle that was the Communist Party circle. "And," said this witness, "Taylor wasn't as close as I was, and he may not have known all this, but I knew it."

Now, you can check the record, because it is there. If you can't find the witness, though I think you can easily, [fol. 535] I will be glad to provide the name of the witness who testified this way.

Well, if this was the situation, you had Charles Allen Taylor interested in local union affairs, get up on his feet and talk, active in union affairs, active with 15, 20 others, and there was a group of five, six, seven—I don't know exactly how many, something of that nature,—within that, which was the ruling inner circle, all or most of whom were CP members, and who were running the union for Communist Party purposes, then I think the rest of the story that I think is what really happened here makes sense, and I think all the information that you read this morning follows.

I think what happened is simply this: Charles Allen Taylor came there; he got up on his feet, he was friendly with Brodose, he was not then known as a Communist; I mean he worked with him in union affairs, he was seen with him, he talked with him; he attended all these meetings. The meetings that he was attending, as far as 15, 20 people were concerned, as far as some of the members were concerned, were ordinary meetings on union policy, local union affairs, incentive pay, all these other things you have heard about. But as far as some others were concerned, they were Communist Party meetings, because as far as they themselves were concerned, they had set it up, they had known that it was some Communist Party member, maybe Brodose or someone else, who had given an order [fol. 536] to have a meeting on incentive pay or something

else along those lines, and to them this was a Communist Party meeting.

And then there may have been others, gentlemen, who were not in the inner circle, who also knew that they were Communist Party members, and didn't know all the people there weren't Communist Party members. And these witnesses, these two people, No. 1 and No. 5, may very well be individuals either in that small caucus within the larger one, who believed that everybody in the caucus was a Communist Party member, believed so erroneously, or people who were not in the ruling inner circle, but close enough to it to get a general impression that this was Communist Party-run or that the basic direction and motivation came from the Communist Party, without realizing that some of the people there, who were joining in these local affairs—and all this was manifested in only local problems, as far as we can tell; national, international, issues were out—didn't realize that some of those people, like Taylor, who were in on this group, had no Communist Party affiliation, membership and what-have-you.

All right, you say to me, "Fine, I will concede all that, but where do you get a Communist Party membership book and where do you get him on the list?"

Well, my only suggestion on that—and I must make [fol. 537] this suggestion, because to me it is inconceivable that Charles Allen Taylor was a Communist Party member knowingly—the only suggestion I can make—and I can't substantiate it, and maybe this Board can't, but maybe too many years have passed to do it—but I suggest that the Communist Party in these days, 1942, 1943, especially in this area, where it was a local union kind of thing more than grand ideology, wasn't basically different in some of its aspects from any club, group or organization that you would belong to. In other words, the guy who got ahead in the Communist Party, like the guy who gets ahead in something down the street that got formed, the Red Cross or what-have-you, is the one who brings in members, the one who brings in dues.

Well, some ambitious fellow, seeing that this guy Charles Allen Taylor was working with people whom he believed to be Communists, maybe even believing that he was

Communist, I don't know, just simply went and put his name down on the rolls. And maybe Svea Katz turned in dues for Charles Allen Taylor, I don't know. But if she did, maybe the ambition went so far as to want either to have collected funds from people at these meetings without saying they were Communist Party dues, and then simply turning them over to the Communist Party—and that is not inconceivable; if you know anything about the UE, this kind of thing happens—or actually just turning over out of her own pocket or out of someone else's pocket the [fol. 538] minimum monthly dues, because, well, you know, he had gotten good guys in, he would pay their dues for a while, and Charles Allen Taylor was never told of all this.

And I say, gentlemen, that this is not only conceivable, but I think this is what happened.

Now, I will tell you why I think it happened, more than anything else, more than the fact that there is no ideology or there are no statements or anything from Taylor that indicate that he was a Communist, and more than the paucity of people who have actually identified him, which I think is significant.

I think what really clinches this is the charge that he was expelled from the party because he became a Trotskyite. Now, the one thing that is clear to this Board, I think,—must be clear; it is clear to us, and it ought to be clear from the record that you have before you—is that certainly Taylor was never a member of the Socialist Workers Party, and was never a Trotskyite. I mean Taylor was there from 1943 on, till 1944; he came back in '46, '47, '48; if he had been a Socialist Workers Party member, had really become a Trotskyite, well, at least we would have had some Trotskyite ideology, or a membership book or a card, or someone saying he was a member of the group, but you don't have it.

But you do have, and I think this is most interesting—[fol. 539] what you do have is a statement by people like No. 1, our confidential informant, No. 1, that it appeared that Taylor had come under the influence of the Trotskyites, and had become a discredit to the Party.

Well, if it is true—and I think it is undisputable that Taylor did not become a Trotskyite; if he was anything, he was not a Trotskyite—then I think this corroborates more than anything else my theory of what happened, because to a Communist Party member who didn't understand that Charles Allen Taylor was not a Communist, who maybe saw a book or a card or saw him at meetings, to such a person the only explanation for Charles Allen Taylor's having turned from the Party and fought it vocally—of course the record is clear that from 1942 on—in 1942 it felt he was standing up on his feet and fighting Brodose, who represented the Communist Party interests, not just in 1943, if you read Maturski's testimony, you will see it goes back to 1942, that even in 1942 this supposed new member of the Communist Party was standing up and fighting the leader of the Party on party issues; totally implausible—and I say that the only way that such a person, a Communist or a person who believed that Taylor was a Communist, could rationalize what Taylor was doing was to say, "Oh, he must be a Trotskyite, why else would he stand up and fight us, why would he have the interest?" [fol. 540] Well, of course, that's a fact. The fact is that Taylor never gave up to any ideology, he never joined any party or group, he went in there and he worked on the local issues, the way you saw him, and he worked with Brodose, who wasn't even identified as a Communist at the time. He doesn't join that party, and he doesn't join the Trotskyites.

Then I say—this is a little point; by the way, it might have been a big point—he no more became a Trotskyite than he would ever become a Communist. The only way that people who didn't understand they were mistaken in believing that he was a Communist Party member could rationalize it was to say that he had become a Trotskyite.

Now, assume for a moment that Taylor had been a member of the Communist Party—and he wasn't—but assuming, supposing he had been a member of the Communist Party, why on earth would a member, a man who joins the Communist Party in 1942, turn to the Trotskyites in 1943? I mean it seems to me that if there was one implausible jump, that a man who was committed to Com-

munist ideology or Communist Party ideology would never make, it would be from the Communists to the Trotskyites. It just seemed much too improbable.

And as I say, in any event there is no evidence that he was a Trotskyite, there is a complete lack of evidence on that, most improbable.

So I say here is the answer. I can't prove it 18 years [fol. 541] later, we can't prove it without confrontation—maybe we couldn't prove it if we had it, because this is lost in history, possibly, possibly the real truths are gone—the man who was a little bit more eager and signed up a guy without asking him, and maybe paid his dues or collected money under a false pretense and paid it as dues, is probably no longer around, or has never been found, or can't be found any more, and maybe he can. You are in a position to try, and I am not. But I say there is no other explanation of Communist Party cards and membership lists, if they exist, for Charles Allen Taylor, and I assume they are not in his name, because that would be really ludicrous. And there is no other explanation for his identification with the Party and supposed expulsion from the Party—it is incomprehensible—and the one I suggest, that like this outer group of people, he was unaware that he was working for Communist interests. When he became aware of it, of course the record is clear, when he as others became aware that there were Communists dominating the union, they got out. He went over with Maturski, and he pulled the highest vote with Maturski in the middle of 1943, the summer of 1943.

So I say here is the explanation: Close enough inside the local union group, ostensibly local politics, and as far as an untutored Charles Allen Taylor was concerned, there was nothing more to this than "How much am I taking home in [fol. 542] my paycheck?"—that's the kind of guy he is. To others, who knew it was Communist Party domination or infiltration or leadership, or what-have-you, it had a completely different appearance. To them these were Communist Party meetings, to them Charles Allen Taylor was speaking for the Party when he got up on his own feet.

But I say then the surprising thing comes: Less than a year after he joined, here he is on his feet fighting the Com-

munist Party. Well, to people who don't understand that he is not in, they can only rationalize this action as being a manifestation of Trotskyism, whereas it was a manifestation of nothing but whatever the witnesses testified to, that Taylor has always been an independent guy, who saw things in his own lights, who stood up in 1942 and 1943 and thereafter and said "This is what I believe in," and who had no more concern with ideology or Communism or Trotskyism than the man in the moon.

And I suggested that—in the hope that this Board has not prejudged this case—it will keep an open mind, again, on it. I suggest that you should consider one last time whether it is possible that a man who had been a Communist Party member should have opposed the leader of the Communist Party less than a year after he joined it, vocally, vociferously, as Charles Allen Taylor did; that he should never again have manifested any Communist tendencies or [fol. 543] membership or Socialist membership or any other kind of membership; that he should never have expressed to a living soul who can be found a Communist idea, a Communist sympathy. I suggest to this Board that it is impossible.

It is also impossible that the Charles Allen Taylor whom you examined at great length, and who 11 witnesses came and said, "He is one of the most loyal guys I have ever met, thinks for himself, stands up, fights for whatever he thinks is right," it is inconceivable that that man, who those 11 people came here to testify for—and they didn't come easily, gentlemen, because it is not a light thing to come to this Board and stand up for a guy who is accused of having been a Communist Party member, and guys like Maturski don't come here unless they really believe—and the others—in Charles Allen Taylor—I suggest to you the simple explanation, and the only one that fits both sides of what information we have, is the one I suggested to you: some eager beaver enrolled Charles Allen Taylor, if it was Charles Allen Taylor who was enrolled, in the Party, paid dues while it was possible, expelled him the same way he was put in, without his knowledge, and that there lies the explanation of what is otherwise a totally inexplicable case of the case of Charles Allen Taylor. And I suggest that this Board

has the means, with this theory in mind—and in justice to Taylor I think you ought to put it in your minds—I say you have the means, the power of the United States Government [fol. 544] in your hands, to test this theory, to make those examinations, and to make those inquiries and to trace down those other members of that group, that larger group, and do whatever is necessary to test this theory, because if it is the right one, and I can see no other that makes any sense, if it is the right theory, then in justice to a man whose life as an American citizen while this hangs over his head is ruined, and a man of course who will never recover from what has happened to him, in justice to that man the United States owes him every energy that it can muster to trace down once more these inexplicable events, in the light of the theory I suggest, and see whether it does not get borne out under reinvestigation, a thorough investigation and a thorough analysis of the facts already before you. Isn't the answer simply that somebody enrolled Taylor in the Party, believed he was a Party member because he attended certain meetings, local meetings to some, and Party meetings to others? That I suggest bears analysis, and I do believe, all apart from being the advocate for Mr. Taylor, which I am, I believe in my own heart, having read this record as thoroughly and as many times as I have, that there is no other possible reconciliation of the evidence than the one I suggest. Because on the record as it stands now, and supplemented with what appears to be the evidence before you, I cannot believe that you can believe that Charles Allen Taylor was a member of the Communist [fol. 545] Party of the United States knowing that he was a member.

Thank you, gentlemen.

[fol. 547] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 550]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1069-58

CHARLES ALLEN TAYLOR, Plaintiff,

v.

NEIL MCELROY, individually and as Secretary of the Department of Defense of the United States of America,

A. TYLER PORT, individually and as Director of the Office of Industrial Personnel Security Review of the Department of Defense of the United States of America, Defendants.

Transcript of Hearing—October 14, 1958

Washington, D. C.

The above-entitled cause came on for hearing on the Plaintiff's Motion for Summary Judgment and Defendants' Motion to Dismiss, before the Honorable Edward A. Tamm, United States District Judge, at 10:45 a. m.

APPEARANCES:

JOHN SILARD, Esq., Counsel for Plaintiff.

BENJAMIN C. FLANNAGAN, Esq., Department of Justice, Counsel for Defendants.

[fol. 551] The Clerk: Taylor v. McElroy.

Mr. Silard: Ready for the Plaintiff, Your Honor.

Mr. Flannagan: Ready for the Defendants, Your Honor.

STATEMENT BY COUNSEL FOR PLAINTIFF

Mr. Silard: If Your Honor please, this is a simple case, challenging the denial of security clearance to the Plaintiff by the United States Government on the basis of false and malicious gossip, statements, what have you, of faceless

secret informants, in the face of rebuttal of those faceless allegations by eleven live witnesses presented to the Government by the Plaintiff.

I asked for half an hour this morning, Your Honor, because there was an exhaustion of remedies point which complicated the case. I am happy to say, however, Your Honor, that I will need only five minutes this morning, because just yesterday, the Government, for the second time, refused clearance for access to classified information to the Plaintiff, and at this time, the Government has informed me they will withdraw their first contention, the exhaustion of remedies contention, leaving only the other issue.

The Court: So there is no administrative channel now open to the Plaintiff; is that right?

Mr. Silard: That is right, Your Honor. I understand Mr. Flannagan will withdraw the exhaustion of remedies contention.

[fol. 552] Mr. Flannagan: That aspect that deals with exhaustion of administrative remedy; but not that aspect of the motion to dismiss which deals with the jurisdiction of this honorable Court.

The Court: Very well.

Mr. Flannagan: We have the papers sent to the Plaintiff, and we would like, by agreement, to put these in the record.

The Court: They may be filed with the clerk.

Go ahead.

Mr. Silard: They have not been received in the mails, but I have been presented with them this morning; and I understood just an hour ago that this had occurred yesterday.

Now, Your Honor, I will go very briefly only to the issue in this case. It is simply this: Does the Fifth Amendment preclude the denial or revocation of a security clearance to the Plaintiff by the Defense Department? On the basis of undisclosed evidence, unnamed informants, in the face of a record presented to the Government by eleven witnesses who appeared and said during the time that somebody says that Charles Allen Taylor was a member of the Communist Party and paid dues and attended meetings in 1942 and '43, and all the time since that time, we, who

worked at Bell Aircraft then, who have known him for sixteen years, who work at Bell Aircraft today with security clearance, have always known him to be loyal, anti-[fol. 553] Communist, and, indeed, that he was perhaps the second or first most outspoken opponent of the Communist leadership in the union, in the very two years in which he is now, sixteen years later, for the first time, alleged to have been a member of the Communist Party.

We say, Your Honor, this is an incredible case which brings to light the horrors of the security program's non-confrontation rule in all its light, because here is a man whose life is shattered on the basis of an absurd allegation; and a reading of the 500-page record of testimony of the Plaintiff and these eleven Bell Aircraft employes who have known him and worked with him—some his friends, some just acquaintances, some not even that—makes clear not only has there never been any evidence that this man was a Communist or affiliated with Communists, associated with Communists, but on the contrary, if there was anyone who couldn't possibly have been a Communist at Bell Aircraft in 1942 and '43, it was a man who stood up to the Communist leader of the union at that time publicly, Brodose, and called him a Red, challenged him on every program that the Communist Party was pushing at the time. Incentive pay—I am not going into all of those things.

Defendants haven't denied, and I don't believe anyone will ever deny that on the record presented, which, of course, does not include any of the evidence or information [fol. 554] available to the Government, none of which was disclosed. But on the record actually presented in open hearing, this is an absurd, a ludicrous allegation.

They have got the wrong man, either because their informants are lying, or because they are mistaken. And I suppose after sixteen years, with a plant of the size of Bell Aircraft, it is possible, other Taylors in the plant, one of whom was a Communist, that there was a confusion of identity. But whatever accounts for it, I don't know

I do know that on the record we made, it is clear that they have got a mistake, that they have taken one of the most loyal, outstandingly anti-Communist members of the union, who couldn't conceivably be a Communist then, as

to whom there has never been the slightest communication, as far as we know, or evidence presented that he could possibly be a Communist.

I present no more than that of the major facts, Your Honor.

The contention, the constitutional contention we make, I think, is simple.

On the basis of a record of this sort, affirmatively showing the falsity and implausibility of the charge of Communist membership, Communist dues and Communist meetings, and what have you, all on the basis of undisclosed evidence, unnamed informants, the United States Govern- [fol. 555] ment may not revoke clearance and by revoking a clearance deprive this man of a livelihood, as it has, and doom him to a life not only of poverty, which, of course, is one result, but of ignominy.

The Court: The Government says they didn't take away this man's right to work in the plant. All they have taken away is his right to have access to classified material.

What do you say?

Mr. Silard: I say to that, Your Honor, that the case that will probably require your holding against me refutes that contention, Greene v. McElroy, where the Court of Appeals directed itself specifically to that contention only six months ago, and said: Of course, we don't put any stock in that, because any realistic appraisal of the facts demonstrates that but for the Government's action, the man would today be employed; that it is the inevitable consequence of its denial of clearance that this man is deprived of livelihood and reputation.

I agree with the Court of Appeals on that; and I think that decision is fully consonant with the recent decisions of the Supreme Court in a number of areas holding exactly the same effect. I think the most recent is NAACP v. Alabama, last June, where the Court said:

> "While it is true as regards the First Amendment that the disclosure of the membership of the NAACP [fol. 556] in Alabama is not in itself a penalty, nevertheless, the private retribution inflicted upon NAACP members cannot be shoved aside, and the State of Alabama is fully responsible under the Constitution,

under the due process laws of the Constitution, and its equal protection clause, and the First Amendment for those private consequences of its public action."

Same thing said in Watkins v. The United States in the previous term. I think in other areas the Supreme Court and the Court of Appeals have disposed of that old-line defense in Government cases.

However, I get now to Greene v. McElroy, not in that aspect of the decision, but in the basic holding of the case last spring, that there is no jurisdiction in this Court to grant the relief we request.

I must say, Your Honor, that I have carefully read Greene v. McElroy a number of time, and I find it an unhappy decision. Unhappy because I think the Court of Appeals has gone much too far in achieving what it felt it had to achieve, that is, denying the relief that Greene requested.

It went too far in going to the issue of jurisdiction. On the one hand, the Court of Appeals seems to grant theoretically that there is a violation of the Constitution in this [fol. 557] procedure. It seems really to assume that it is correct that a denial of confrontation is a denial of due process under the Fifth Amendment.

But, on the one hand, as I say, accepting that premise, it goes all the way to the other side and says there is no jurisdiction under the laws and the Constitution in the District Court to entertain this suit, because the relief that is requested or, in the alternative, the only relief that could be granted in a case of this sort impinges upon the Government's administrative determination of security questions.

That is, says the Court of Appeals, if we were to grant this relief, if the District Courts would accept these cases, we would be faced with the alternative either of requiring the Government to disclose confidential informants, which may jeopardize the Government's security interests, or of granting clearance which, in turn, may also jeopardize the Government's security interests.

And, says the Court, Courts may not impinge upon the security interests of the United States Government.

Now, accepting—which I do not—for the purposes of argument that that is the unhappy alternative with which a court would have to be faced were it to have ruled for Greene or for Mr. Taylor, I still believe it to have been a mistake to conclude that there is a jurisdictional defect.

[fol. 558] I don't believe that there can be a jurisdictional defect. I see nothing in the statutes or the Constitution which deprives this Court of jurisdiction to hear this case. On the contrary, I believe that the Constitution and the statutes affirmatively require the Court to take the case. That is, to take jurisdiction of the case.

I believe that general declaratory judgment jurisdiction, the Constitution provisions involved here, necessarily give courts jurisdiction to hear issues of this sort.

If, however, the relief which would have to follow an affirmative ruling for the Plaintiff, after the taking of jurisdiction, impinges upon the security interests of the Government, it may well be that there is a discretion in the Court to refuse that sort of relief, or a discretion to grant judgment against the Plaintiff, because courts are unwilling to grant the kind of relief which will in that manner impinge upon security interests.

In other words, I believe the right ruling, from the point of view of the Court of Appeals, and one far less troublesome, would have been a ruling in the discretion of the Court, because the relief required if a ruling were to be made for the Plaintiff is an unwise one in the discretion of the Court, judgment should be granted, or relief should be withheld. I think that would have been easier than jurisdiction.

[fol. 559] However, having talked jurisdiction and having predicated the jurisdiction ruling on the relief which would have to follow a ruling for the Plaintiff, we are posed with a dilemma, because we are not clear, under Greene, whether, if the relief which is requested does not require one of those two unhappy alternatives, that the Court pointed to in Greene, whether the result would have to be different.

In other words, is it merely the relief of either granting confrontation or clearance, which was the predicate of the Court of Appeals decision in Greene? If so, possibly a complaint such as this, or some other, which does not specifi-

cally require that sort of relief, perhaps such a complaint escapes the ruling in Greene.

Maybe there is a new issue for Your Honor. I don't really know, because I don't really understand the Greene decision. I don't understand whether it is predicated entirely on the relief issue, and I don't understand why there is a jurisdictional question if the predicate of the decision is merely the type of relief requested.

It does not seem to me that a court should throw out a case for lack of jurisdiction because of the relief which is prayed or which would have to follow logically from an affirmative ruling.

On the whole, however, Your Honor, I am afraid I must be candid. That in reading the Greene case, I think this [fol. 560] could fairly be said: The Court of Appeals was of the opinion that this whole issue, this whole question of confrontation under the security program is beyond this Court's powers to adjudicate or, to put it perhaps more happily, that this Court ought not to adjudicate such a question.

I think I would be less than candid if I didn't say that that is what the Court of Appeals was trying to do in Greene. Whether it has actually done that, I don't know. I am confused to some extent by what follows from the premises stated in that opinion. But I think I must concede, Your Honor, that that is what the Court of Appeals wanted to do; and unless Your Honor were to find, as I suggested, apart from what the Court of Appeals was trying to do, that the decision is predicated upon the relief requested, and that it goes only to a case in which that is precisely the relief requested, that is, either clearance for security or confrontation by the informants, unless Your Honor were to find that that decision is precisely so limited, I would have to say that we are bound by Greene.

Thank you, Your Honor.

Statement by Counsel for Defendants

Mr. Flannagan: If it please the Court, the first thing I would like to take up is that Greene case was not predicated solely on the relief to be granted, but was even more

basic in that it was predicated on the fact that no one has a [fol. 561] constitutional right to access to State secrets, to the Government's classified information—defense of classified information.

When you have that as a premise, then you must agree with both this honorable Court in Greene v. Wilson and the Court of Appeals in Greene v. McElroy, that the plaintiff has not been deprived of some legal interest personal to him, because he has no legal interest in the Government's secrets.

We say that there is no justiciable controversy in the case at bar, because the Defendants have not deprived the Plaintiff of a legally-protected right.

Now, by the determination of June 14, 1957, which was reaffirmed yesterday, October 13, 1958, and which for convenience and reference we will just call the June 14 determination, because that is the one referred to in the complaint, and in the demands, we would like to point out, first of all, that that determination of June 14 revoked an existing confidential clearance that the Plaintiff had, which confidential clearance had been suspended on September 10, 1956; and that the June 14 determination also denied an application by Bell Aircraft for the Plaintiff to be granted secret information.

Now, the Plaintiff needed, according to the affidavit of Bell Aircraft, both secret and confidential clearance [fol. 562] to work at Bell.

Now, when the confidential clearance was suspended on September 11, 1956, he was terminated from the employ. Now Plaintiff seeks to have the determination of June 14 reversed, rescinded and annulled. In other words, Plaintiff seeks to require the Government to disclose its classified defense information to him directly by having an order which would require the restoration of his confidential clearance, and indirectly by making it impossible for the Government to prevent the Plaintiff from having access to its secret information.

Now, by the terms of the contracts, the defense contracts, the security agreements and the regulations incorporated therein by reference, the Government—to use the expression of the Court of Appeals in the Greene case—has ex-

ercised the right to protect itself against threats to its survival by requiring the contractor to exclude persons not cleared for such access.

Now, the Government has not required Bell Aircraft to separate the Plaintiff from employment. It has simply required Bell Aircraft to deny to the Plaintiff access to Government secrets.

The Court: Counsel says, as a practical matter, that is doubletalk. If he doesn't have access to Government secrets, he doesn't have a job.

[fol. 563] Mr. Flannagan: Well, if that is true, it is not the fault of the Government. It is the determination of Bell Aircraft. The notice of suspension, the notice of final determination was sent to Bell Aircraft. A part of that letter stated:

> "Although your facility may be performing classified work for the Defense Department, the decision in this case is not intended to prevent the employe from performing such non-classified work as your facility may have available for him."

If Bell Aircraft wished to employ the Plaintiff for work not pertaining to Government classified defense information, the Government would not only welcome that and would encourage it, and has already done so in its letter to Bell Aircraft.

The only thing I may say beyond that is that if it is considered to be the result of the Government's action, it has been held by the Court of Appeals that as it was based on a valid contract with the Government, entered into to protect its survival, even envisioning that result, it does not mean that the Government has deprived the Plaintiff of a legally-protected right; and for that reason, we say the determination should not be overturned, and this honorable Court should not require the Government, directly or [fol. 564] indirectly force the Government to choose between giving the Plaintiff access to classified information and terminating its contracts.

We also direct ourselves in Part 3-C of our memorandum to the allegation of the Plaintiff that he has been deprived of due process by having his job taken away from him.

In that section, we pointed out that the Plaintiff has not contended that there has not been compliance with applicable statutes and regulations, and that Plaintiff has also not contended that the contracts on which the Plaintiff, in effect, seeks to work, were not validly labeled, "Classified."

He simply says that the determination of June 14 had the effect of taking away his job without due process of law.

Now, the Court of Appeals considered that problem and said that this was not the situation that was present in the case of Parker v. Lester, which is somewhat of a landmark case in the Ninth Circuit, relating to Coast Guard Regulations. The Court noted that the Government has not attempted to regulate an entire branch of the working population regardless of the lack of any direct relationship of the task of a particular worker to the requirements of national security.

In other words, in Greene v. McElroy, they said there was a direct relationship between what the Government had [fol. 565] in its contractual terms and the presumed effect on the Plaintiff there, that he has only been deprived of access to the Government secrets but not deprived of a livelihood.

As I said before, there is no constitutional right to have access to the Government's defense secrets. I have repeated that because I think that is basic to the whole position here.

In determining whether or not we will go into the evidence, the Plaintiff here is suggesting that this honorable Court should hear this case de novo, and should consider the case on the merits.

The Court of Appeals has ruled that it is not for a Court to hear whether or not a person should be granted clearance. It is not a judicial function. It is an Executive function. It is one solely for the Executive Department to make, because the Executive Department is the one that has to have the responsibility for making the right decision.

I would like to say here that the Government has not been arbitrary, capricious. It is true, it hasn't disclosed all of its information, but on the basis of the information that it did disclose, there is sufficient information here to show that it has not been arbitrary or capricious.

I respectfully invite this honorable Court's attention to [fol. 566] Exhibit No. 30 in the Stipulation of Facts, which sets forth the information received from the six confidential sources which was read to the Plaintiff. That is not all of the evidence that the Board had, I am told. I do not know all the evidence that the Board had. It is their responsibility to make a determination.

The Court: Why did it take the Board over two years to finally dispose of this case?

Mr. Flannagan: This case was finally disposed of on June the 14th, 1957. At that time, if this Plaintiff had wished, he could have come to Court; but he did not. He elected to invoke the procedures of the review regulation: and on November 22, 1957, he asked the Defendant, Mr. McElroy, to reverse the determination in this case.

By letter of February 3, 1958, the Plaintiff was advised that an investigation had been set forth, had been instituted; and on May 30, '58, he was advised that the other determination, the one of June 14, had been rescinded and new proceedings would be in order.

After that time, we had amended charges, or amended statement of reasons; they had an amended reply to it: they have had two hearings; they have taken a considerable amount of time and effort; and I think that here we do not have, as was alleged by Plaintiff's counsel in various telegrams and other letters, a situation of bad faith.

[fol. 567] They said we tried to delay this action. I would like to point out all of the law was on the side of the Defendants before this action was instituted. Both the District Court and Court of Appeals had ruled in favor of the Government on every point raised in this case before this case was instituted.

So I think it is somewhat hollow, as I said in my memorandum, for the Plaintiff's counsel to say that we have given him extensive administrative proceedings as a means of depriving him of his day in Court.

We have given him what he could most hope for, namely, a complete administrative review, because his only hope would lie there. Under the ruling in the Greene case,

it is an Executive function which must rest with the Executive to make the determination.

That being true, I can only say that the case is involved, and that they have been conscientious in the performance of their public duties. There has been no conscious delay. I am sure they tried their best to resolve this fairly and equitably, and at the same time, in the interest of national security.

That is the only thing I can say. We have no motive; and the lack of motive is the only defense you can have in bad faith. I say, we have no bad faith here.

I would like to point out that since we do have the in-
[fol. 568] formation contained in Exhibit 30, and also a part of it was repeated in the letter to Mr. Taylor, which I gave you this morning, that is not all of the information contained in the Exhibit 30, but it does show that when Mr. Taylor claims that they were talking about another Mr. Taylor, that the Board had information before it which could reasonably lead the Board to believe it was the same Mr. Taylor that they were talking about, the Plaintiff in this case. So it was put in there to assure him that they were talking about him, and why they were.

We are in the position here of urging this honorable Court not to consider the case on the merits; but I go this far, because in the Court of Appeals, in Greene v. McElroy, it stated that it was conceivable that the Government could be arbitrary, but it didn't have to reach that determination.

Here I say there is sufficient evidence on information exposed to show that the Government has not been arbitrary, capricious, so this honorable Court doesn't have to reach such a determination here either.

What I made reference to is on Page 951 of 254 F. 2nd, Footnote 13.

We are in the position here, when you consider the evidence, of considering only one-half of it and saying that a determination should be made on that. The Board con-
[fol. 569] sidered all the information available to it and reached a determination adversely to the Plaintiff.

Turning now to Part 3-D of my memorandum, we say that the Plaintiff was not deprived of due process by the administrative procedures applicable under the Industrial Security Program.

We also point out there were no legal issues here presented which were not resolved in the Greene case.

First of all, I would like to say that the Plaintiff is not entitled to "a full and fair hearing." He used that term, but that is a term used in the Administrative Procedures Act—equivalent to judicial trial. No full and fair hearing. It is used as a term of art. No requirement there be confrontation of witnesses; and no requirement that there be compulsory disclosure of the Government's files.

The Court of Appeals noted in the Greene case that confrontation with one's "accusers" is clearly not required, to use the Court of Appeals' language, in cases of this variety.

They also pointed out there that the Government didn't give that to Civil Service employes, for example, when they had a hearing before an Executive agency. The Court of Appeals said that the contractor's employe was entitled [fol. 570] to no more than a Civil Service employe would be entitled to. Also, the Court of Appeals held in Greene that there was no requirement that the Government choose between dropping the lawsuit, if you want to call it that, or disclosing its files.

In other words, this is not a criminal prosecution. That is very important. It is not even a judicial process. It is an Executive process. That is basic to the whole position here.

The Court stated, if I may quote from the Court of Appeals:

> "In the present case, the only sanction the courts could employ against the Government for its failure to disclose all of the information used against Greene would be to declare the revocation of Greene's clearance invalid. If this had any practical effect at all—and courts seldom issue orders which have no practical effect—it would amount to ordering his restoration to access of classified information. This, in turn, would require the Executive . . ."—meaning the Executive Branch of the Government—". . . to disclose a state secret to Greene or to cancel its contracts [fol. 571] with ERCO."

That was Greene's employer.

> "No court has yet forced the Government to choose between such alternatives, either of which might compromise the security of the country."

That is a quote taken from 951 of 254 F.2nd.

We respectfully submit here that the Government should not have to choose between granting Taylor secret clearance or terminating defense contracts with Bell Aircraft, because either of those alternatives might prejudice the security of the country.

To devote one moment to a full and fair hearing, I would like to point out there is no statutory provision for the subpoenaing of witnesses, for example. It is not a judicial process. Constitutionally, the criterion for granting or revoking clearance is the confidence of the Executive; and as the Court of Appeals stated in Bailey v. Richardon:

> "Confidence is not controllable by process."

We think that is applicable here. The determination made by the Executive should not be overturned by this honorable Court. The determination has been adverse to the Plaintiff, and we think that that determination should [fol. 572] rest there.

Therefore, we respectfully submit that the Plaintiff's motion for summary judgment should be denied, and that the Defendants' motion for dismissal or, in the alternative, cross-motion for summary judgment, be granted; and the complaint should be dismissed.

Mr. Silard: May I have just one minute to reply to one point?

I had thought, in view of my rather generous characterization of Greene, the lengthy debate would be unnecessary. I do believe it is unnecessary.

I want to say only two things. I think the procedure is not only non-judicial and non-administrative; I think it is truly un-American; and I think this nation has made a great mistake in insulating gossipers, the malicious, the maniac, and all those persons who have been demonstrated in the course of the last ten years to have come forward

so eagerly in various cases to make allegations later shown to be ludicrous, accepted by the Government later to have been malicious and false.

I think it is truly a departure from the constitutional standards, the political and libertarian standards of this country to have adopted procedures so far from fair and which so insulate the ill-motivated, mistaken people who won't come forward and reveal their names and won't come [fol. 573] forward and testify, to have insulated them from the very persons who are the innocent victims of their malicious gossip.

Your Honor, this is like Peters. There is no Secret Service Agents here whose identity is involved. No FBI agents. That is not the question. It is the landlady; it is some idiot. And I make that statement advisedly, because in the record in Peters, before this Court and the higher courts, there was ample demonstration of all those incidents within the last ten years which were later shown to have been based on nothing better than this kind of gossip or rumor.

I do believe it is unnecessary to belabor these points. I don't think the question is really open for you.

I would like to say one thing. I would like to direct Your Honor's attention to Page 63* of Exhibit 30, which is the last hearing, August 1. I do this because the Government has somehow slipped in here—

The Court: What page?

Mr. Silard: Page 63. The Government has slipped in the suggestion here, and I almost didn't catch it, that something has been disclosed to Mr. Taylor in this case, something has been revealed.

That is just before Exhibit 31, Your Honor.

The Court: I have it before me.

Mr. Silard: Beginning on Page 62, and onto Page 63, [fol. 574] which is what was read to me on August 1 by the Board, and the Board, after reading this one-page statement, concluded, as you see, on Page 63:

> "That, Mr. Silard, is the information of an evidentiary nature which we are permitted to reveal to you at the present time."

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* Printed at page 104.

Now, this information of an evidentiary nature, I will read only the last paragraph just preceding that, Your Honor.

> "A sixth confidential source furnished information in substance showing that in or about July 1944, he had seen a list of names in the possession of a member of the Buffalo branch, Socialist Workers Party, of persons favorable to the Socialist Workers Party,"

and so forth.

Here we are, Your Honor. This is what they say has been disclosed to us. I suppose they are saying we are confronted with something when we are told by a confidential informant he once saw an un-named and unknown list in the possession of unknown person, which, due to some perhaps further unknown person's opinion, indicated that this Plaintiff was favorable to the Socialist Workers Party.

Well, Your Honor, I don't understand what the contention is in this case, if this is confrontation. This is not [fol. 575] confrontation. This is allegation. This is an allegation that somebody unknown saw an unknown list in the possession of an unknown person, prepared by some still yet unknown person, saying that Plaintiff was such-and-such.

Your Honor, I don't believe, will put any stock in a contention, if truly such a contention is being made here, and I don't believe it is, that we have ever been confronted with anything.

That is not confrontation. That is not subject to rebuttal, not subject to evaluation. It is just plain nothing. It is no better than telling us somebody said he was a Communist; and that is exactly what that statement is. It is not evidentiary. It doesn't disclose evidence to us; discloses nothing at all.

I would beg Your Honor only to agree with me on this one point, and I don't believe the Government really refutes the point that this is a confrontation case, because most clearly, that is what it is.

The Court: The Court has studied the pleadings, the exhibits in this case at great length. I have been con-

cerned about the administrative proceedings, because of the periods of delay, and the apparent uncertainty on the part of the Defendants in reaching some final conclusion in the case.

As counsel knows, however, the Court has no authority to substitute its judgment for that of the Executive officers [fol. 576] charged with the discharge of these duties. I believe the Court's ruling in this case, as counsel for the Plaintiff concedes, is entirely bound by the holding of the Court of Appeals in the case of Greene v. McElroy. I have been unable to distinguish this case from the ruling in the Greene case.

Accordingly, the Court is required to grant the Defendants' motion for summary judgment and to deny Plaintiff's motion.

Mr. Silard: Your Honor, I have an order to that effect, of which I have given a copy to the Defendants; and if Your Honor would see fit to sign it, we would like to avoid any further delay in this case.

The Court: Very well.

Mr. Silard: I have left blank the place where it states the motion that was granted, because I did not know whether Your Honor would grant the summary judgment or the dismissal, and one or the other would be suitable at that portion of the order.

The Court: Is the form of this order agreeable to the Government?

Mr. Flannagan: Your Honor, I am in the unfortunate position of being Government counsel and not in possession of authority to bind my section chiefs. I have looked at it. I don't see any objection to it.

[fol. 577] The Court: I will sign the order in the form in which it is submitted.

Mr. Silard: Thank you, Your Honor.

The Court: Mr. Marshal, will you announce a ten-minute recess.

(Whereupon a short recess was taken.)

Mr. Flannagan: May it please the Court, in studying the order that you just signed, I note there is an error

in the order. It speaks of depositions; and there are no depositions. There is a Stipulation of Facts and attached exhibits. We think the order should be changed.

The Court: You may write it in in pen the way you want it, and I will initial it.

(Whereupon the hearing on the motions was concluded.)

[fol. 578] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 580] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1069-58

CHARLES ALLEN TAYLOR, Plaintiff,

v.

NEIL MCELROY, A. TYLER PORT, Defendants.

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DISMISSING COMPLAINT—October 14, 1958.

This cause having been heard on plaintiff's and defendants' motions for summary judgment and defendants' motion to dismiss, and the Court having considered the entire record, the pleadings, affidavits, stipulation of facts with attached exhibits, and memoranda of points and authorities filed herein, and there having been a full and complete hearing and the Court having found that there is no genuine issue as to any material fact and that the defendants are entitled to judgment as a matter of law under the controlling ruling of the United States Court of Appeals for the District of Columbia Circuit in *Greene* v. *McElroy*, 254 F. 2d 944, it is therefore, by the Court this 14th day of October, 1958:

Ordered that the plaintiff's motion for summary judgment be, and the same hereby is, denied; and it is

Further Ordered that the defendants' motion for Summary Judgment be, and the same hereby is, granted, and that the complaint be, and the same hereby is, dismissed with costs to the defendants.

/s/ Edward A. Tamm, United States District Judge.

A True Copy

Attest:

Harry M. Hull, Clerk

By /s/ Doris L. Fisher

[Seal]

[fol. 581] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil No. 1069-58

CHARLES ALLEN TAYLOR, Plaintiff,

vs.

NEIL MCELROY, A. TYLER PORT, Defendants.

NOTICE OF APPEAL—Filed October 14, 1958.

Notice is hereby given this 14th day of October, 1958, that plaintiff hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 14th day of October, 1958 in favor of defendants and against said plaintiff.

/s/ John Silard, Attorney for plaintiff, 1631 K St. N.W., D.C.

Mail copy to:

Benjamin C. Flannagan, Atty., Department of Justice, Washington 25, D.C.

[fol. 582] [File endorsement omitted]

In United States District Court
for the District of Columbia

the 16 day of October 1958

Civil Action No. 1069-58

Charles Allen Taylor,

vs.

McElroy and Port.

Praecipe—Filed October 16, 1958

The Clerk of said Court will please transmit the entire original record as the record on appeal to the Court of Appeals. Plaintiff will not stipulate to omit any portion of the record on appeal.

/s/ John Silard, 1631 K St., N.W., D.C., Attorney for plaintiff.

[fol. 583] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 584] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil No. 1069-58

CHARLES ALLEN TAYLOR, Plaintiff,

v.

NEIL MCELROY, A. TYLER PORT, Defendants.

ORDER DIRECTING CLERK TO CERTIFY AND TRANSMIT TRANSCRIPT OF HEARING, ETC.—November 3, 1958

Upon consideration of plaintiff's oral motion to supplement the record on appeal, it is this 3rd day of November, 1958, Ordered, that the Clerk shall certify and transmit to the United States Court of Appeals for the District of Columbia Circuit a supplemental record consisting of: pp. 1-28, the official transcript of the hearing on plaintiff's motion for summary judgment and defendants' motion to dismiss or in the alternative for summary judgment before the Honorable Edward A. Tamm, United States District Judge at 10:45 a.m. on October 14, 1958.

/s/ Edward A. Tamm, Judge.

Seen:

/s/ John Silard, Attorney for Plaintiff.

/s/ Benjamin C. Flannagan, Attorney for Defendants.

[fol. 585]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
WASHINGTON 1, D. C.

JOSEPH W. STEWART
CLERK

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit, hereby certify that no briefs have been filed in said Court of Appeals nor hearing held nor judgment rendered by said Court of Appeals in the case in said Court of Appeals entitled:

No. 14,741

CHARLES ALLEN TAYLOR, Appellant,

v.

NEIL MCELROY, individually and as Secretary of the Department of Defense of the United States, et al., Appellees.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this seventh day of November, A. D. 1958.

[Seal]

/s/ Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit.

[fol. 586]

SUPREME COURT OF THE UNITED STATES

No. 504, October Term, 1958

CHARLES ALLEN TAYLOR, Petitioner,

vs.

NEIL McELROY, A. TYLER PORT.

ORDER ALLOWING CERTIORARI—December 15, 1958

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted, and the case is assigned for argument immediately preceding No. 180. The case of No. 101 is assigned for argument immediately following No. 180.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Frankfurter took no part in the consideration or decision of this application.

LE COPY

Office Supreme Court, U.S.
FILED
NOV 8 1958
JAMES R. BROWNING, Clerk

No. 504

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

CHARLES ALLEN TAYLOR,

Petitioner,

v.

NEIL McELROY, A. TYLER PORT,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No.

CHARLES ALLEN TAYLOR,

Petitioner,

v.

NEIL McELROY, A. TYLER PORT,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to the Court of Appeals to review the judgment in this case of the United States District Court for the District of Columbia.

Opinion Below

The opinion and judgment of the District Court are not reported but are printed in Appendix A, *infra*, p. 16. Since the District Court held, and both parties agree, that

the decision of the Court of Appeals in *Greene* v. *McElroy*, certiorari granted October 27, 1958,[1] precludes the relief sought by petitioner, the *Greene* opinion is reprinted as Appendix B, *infra*, p. 18.

Jurisdiction

Summary judgment was entered against petitioner by the United States District Court for the District of Columbia on October 14, 1958. Petitioner docketed his appeal in the Court of Appeals for the District of Columbia Circuit by filing the original record in the Court of Appeals on October 16, 1958. Petitioner is invoking the jurisdiction of this Court under 28 U.S.C. 1254(1) to grant certiorari before judgment in the Court of Appeals because the "confrontation" issue pending before this Court in the *Greene* case is so amplified and illuminated by the record herein as to render concurrent consideration of petitioner's and Greene's case a matter of "imperative public importance." Rule 20; *cf. Bolling* v. *Sharpe*, 347 U.S. 497, 498.[2]

Questions Presented

1. Whether federal courts are powerless to afford redress against the Government's arbitrary revocation of petitioner's clearance for access to classified defense information based solely on accusations by faceless informants confronted neither by petitioner nor the Hearing Board and

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[1] *Greene v. McElroy*, 254 F. 2d 944; No. 180, October Term, 1958.

[2] In Point II of the Reasons for Granting Certiorari, *infra*, pp. 12 to 15, we indicate the ways in which the record herein amplifies and illuminates the vital "confrontation" issue now pending before this Court. In addition, however, the Court should note that this is a case of review "before judgment" only in a technical sense; since both parties agree with the District Court that the "no justiciable controversy" ruling in *Greene* precludes the relief petitioner seeks, the only judgment that the Court of Appeals could enter would be a pro forma affirmance on the authority of *Greene*, which would in no way assist this Court in resolving the pending issues.

contrary to petitioner's unrebutted demonstration to the Hearing Board of the utter falsity and patent implausibility of the accusations against him, where such arbitrary revocation results in the termination of his employment and the curtailment of his means of livelihood.

2. Whether, if power to afford redress exists in the federal courts, it is consistent with statutory authority and the due process clause of the Fifth Amendment for the Government to revoke petitioner's clearance for access to classified information solely on the basis of accusations by faceless informants confronted neither by petitioner nor the Hearing Board and contrary to petitioner's unrebutted demonstration to the Hearing Board of the utter falsity and patent implausibility of the accusations against him.

Statutes Involved

The statutes and regulations of the Defense Department upon which the Government apparently relies for its authority are set forth in Appendix C, *infra*, p. 34.

Statement

Petitioner was employed from 1941 until 1956 as a tool maker at Bell Aircraft Corporation, Buffalo, New York (S. 4).[3] On September 6, 1956, without advance notice or intimation of any sort to petitioner, the Office of Industrial Personnel Security Review of the Defense Department dispatched a letter to the company suspending any and all clearances for access to classified defense information then held by petitioner (S. Ex. 6). Because of this suspension of clearance and since petitioner's work as a tool maker required access to classified defense information, petitioner

[3] Where the letter "S" is used, it refers to the Stipulation of Facts entered into between the parties. Where the letter "T" is used, it refers to the transcript of the 1956 "hearings" before the New York Industrial Personnel Security Hearing Board. The entire original record is before this Court.

was forthwith discharged by the company on September 11, 1956, and since that date has been unable to obtain employment sufficient for means of livelihood (S. 4-5; S. Exs. 3, 5, 8).

Shortly after his discharge, petitioner received from the Office of Industrial Personnel Security Review of the Defense Department a "Statement of Reasons", dated September 10, 1956, for the suspension of his clearance for access to classified defense information (S. Ex. 7). This 1956 Statement of Reasons charged that in 1942 and 1943 petitioner had been a member of, paid dues to, and held a membership card in, the Communist Party. Petitioner promptly entered a categorical sworn denial of the charges and submitted a "Notice to Produce" asking to be informed of the names and addresses of the persons upon whose information the charges in the Statement of Reasons were based (S. Exs. 9, 12).

On November 1, 1956, petitioner appeared at the "hearing" before the New York Industrial Personnel Security Hearing Board to defend himself against the charge of Communist affiliation some 13 or 14 years earlier. At the outset of the "hearing", the Board made clear that it would produce no evidence in support of its charge of Communist affiliation nor even inform petitioner of the names of his accusers (S. 6; T. 4, 8-10). Thereupon, notwithstanding the difficulty of proving a negative and particularly a negative concerning years long past, petitioner undertook and accomplished the task of showing the utter implausibility and falsity of the charge.

Petitioner testified under oath that he had never been a member of, paid dues to, held a card in, or aided or abetted, the Communist Party in any manner (T. 374-468). He not only gave categorical sworn denials to the charge of Communism and each facet thereof, but he demonstrated his continuous public opposition to the Communist Party pro-

gram and the Communist Party leadership of his local union (*ibid.*). Lengthy cross-examination by the Board and its counsel served only to reinforce petitioner's testimony (T. 400-457, 463-468).[4]

Eleven witnesses took the stand to demonstrate under oath that the charges were patently implausible and wholly false. Petitioner's son, Eugene Taylor, and ten employees of the Bell Aircraft Corporation, most of whom presently hold security clearances at Bell and all of whom have worked with and known petitioner during the fifteen years of his employment there, testified that petitioner had never discussed Communism or the Communist Party favorably; had no Communist books, literature or friends; and was regarded by the witnesses and others active in the local UAW union as "an independent thinker, and . . . not a Communist. Now or ever" (T. 15-373, 84). In the words of one witness, Thomas Smith, "if Russia or any foreign country invaded this country, Taylor would be the first guy to get shot fighting them. That's the kind of guy he is, to me . . . He's a real, 100 per cent American" (T. 326).

These eleven witnesses not only proved petitioner's *non-Communism;* they also proved his *anti-Communism* during the very period that faceless informants allege his Party membership. The Communist Party leader of petitioner's local UAW union in 1942-1943 was Allie Brodose. John Maturski, who defeated Brodose for the presidency of the local in 1943 on an all-out anti-Communist platform, testified that petitioner stood with him publicly in opposition to Brodose and the Communist Party program urged by Brodose (T. 113-169). Joseph Rosmyslowski testified that petitioner had frequently been publicly opposed to, and had

[4] For example, the Board's repeated efforts to tie petitioner to the Communist Party by questioning him about a list of persons apparently known to the Board as Buffalo-area Communists only indicated anew petitioner's absence of Communist affiliation for he was totally unacquainted with these people (T. 406-10, 412-13, 421, 442-44, 466).

become generally known as a bitter enemy of, Brodose—indeed he recalled an angry public argument between petitioner and Brodose in 1942 or 1943 in which petitioner repeatedly referred to Brodose as a "red" (T. 53-81, 78). Leon Meyers recalled an incident in 1942 or early in 1943 when petitioner had warned him about associating with Brodose because "you know he's a Commie" (T. 268-269). Petitioner's 1942-43 consistent public opposition to Brodose personally and to the Communist Party platform urged by Brodose, was testified to, on personal observation, by all ten of the Bell Aircraft employees who appeared in his behalf (T. 53-56; 67-81; 124-128; 147; 159-160; 178-179; 200; 220-225; 232-234; 258; 266-269; 274; 288-289; 293-294; 306-308; 320-325; 346-348; 351-352; 366-368; 370-372).

After three days of "hearing" before the Industrial Personnel Security Hearing Board, there was not a word in the record of the hearing to support the charge against petitioner, but, on the contrary, only the testimony of twelve witnesses on direct and cross-examination showing the patent falsity and implausibility of the charge against petitioner. Yet, notwithstanding this sworn record, the Office of Industrial Personnel Security Review on June 14, 1957 found "true as stated" the charge that the petitioner had been a member of, paid dues to, and held a membership card in, the Communist Party during 1942-43 (S. Ex. 14). On the basis of this incredible finding, petitioner's security clearance was permanently denied as "not clearly consistent with the interests of national security" (*ibid.*).

On November 22, 1957, petitioner appealed to the Secretary of Defense asking either to be given clearance or to be confronted with his accusers (S. Ex. 15). Five months having elapsed without action by the Defense Department on his appeal to the Secretary, petitioner filed this suit in

the United States District Court for the District of Columbia seeking a review of the denial of his clearance without confrontation by his accusers. On May 30, 1958, more than six months after petitioner's appeal to the Secretary of Defense and more than six weeks after the institution of this action, the General Counsel of the Defense Department advised petitioner that the adverse security determination in his case, although "reasonably supported", had been set aside and that the case was being returned to the Hearing Board for unspecified "further proceedings" (S. Ex. 18).

On June 19, 1958, the Hearing Board transmitted an Amended Statement of Reasons to petitioner (S. Ex. 23). The charge contained in this Amended Statement was practically identical with the former charge. The only real difference was that the new charge, instead of alleging that petitioner had and "*may still have* membership in the Communist Party", now alleged that he had been *expelled* from the Communist Party in 1943. In addition, the Amended Statement, in a civil administrative "indictment" for perjury, charged petitioner with false testimony at his 1956 hearing in denying Communist Party affiliation (*id.* at pp. 4-5). Petitioner immediately denied the amended charge under oath, and pointed out through his counsel that "Mr. Taylor is the first American to be judged by a tribunal which accuses the defendant upon secret accusations of being untruthful in his assertions of innocence" (S. Ex. 24).

Now at long last, after two years of waiting, it appeared that petitioner might be confronted by his accusers. A hearing was scheduled for July 11, 1958, and petitioner appeared with counsel ready to face his accusers only to be told by the Board that no decision had yet been reached on whether to confront him with his accusers. The hearing was continued (S. 8).

On August 1 the hearing was reconvened once again.

This time the Board flatly announced that it was not going to confront petitioner with his accusers.[5] Instead the Chairman read into the record anonymous synopses of accusations of Communist affiliation in 1942-43 (S. Ex. 30). The Board refused to indicate whether it had ever examined the confidential informants, what if anything it knew about their past criminal or other records, and what degree of hearsay was involved in the assertions of the informants (S. Ex. 31, 33).[6]

Petitioner having been denied confrontation again and

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[5] August 1, 1958, Hearing Transcript, at pp. 50-59.

[6] The Board's embarrassment at answering these questions is understandable, for the record is clear that the Board had no direct evidence available to it and was required to consider second-, third- and fourth-degree hearsay assertions of accusers the Board itself never saw. Reliance by the Board upon remote hearsay charges by informants the Board itself never sees has been fully conceded by Mr. Jerome Fenton, Director of Industrial Personnel Security, before the Senate Subcommittee on Constitutional Rights (84th Cong., 2d Sess., Hearings, pp. 623-4); and the anonymous synopses of the accusations which the Board read into the record here reveal this fact. For instance, one of the confidential sources is said to have furnished information "in substance showing that in or about July 1944 he had seen a list of names in the possession of a member of the Buffalo Branch, Socialist Workers Party, of persons favorable to the Socialist Workers Party . . . and that this list contained the name Charles Taylor." (S. Ex. 30, p. 63). Thus the Board was permitted to draw inferences concerning the charge of petitioner's Communist Party membership from 1) an unknown person's preparation of a list of persons "favorable to the Socialist Workers Party" which was 2) seen by an unnamed informant in the possession of 3) yet another unknown person, all of which was told presumably 4) to a governmental agent and 5) ultimately transmitted to the Hearing Board.

With reference to the Board's access only to investigative reports (see S. 6) rather than to original materials, the record contains a specific concession by the Chairman concerning the alleged Communist Party membership cards or books of petitioner that "this Board does not physically at this time have those cards in its possession . . . we have no information as to whether or not the signature of Mr. Taylor appears on the card or book alleged to be a membership card, or membership book of Mr. Taylor . . ." (T. 10-11). No answer has ever been made by the Board to the point made by counsel for petitioner that a card in the name of "Charles Taylor" could not possibly be the card of any man by the name of Charles Taylor, since pseudonyms were invariably used by the Communist Party.

again, it was now apparent that his appeal to the Secretary of Defense had produced nothing but a fruitless nine-month delay of legal redress. On September 12, 1958, petitioner filed a Motion for Summary Judgment in the District Court to which respondents cross-moved. A few minutes before the argument in the District Court on October 14, 1958 on these motions, counsel was informed that petitioner had once again been finally denied security clearance. Thereupon, the District Court, although stating that it had been "concerned about the administrative proceedings, because of the periods of delay," entered summary judgment against petitioner "under the controlling ruling" of the Court of Appeals in the *Greene* case. See Appendix A, *infra*, p. 16.

On October 16, 1958, petitioner docketed his appeal by filing the original record in the Court of Appeals. On October 27, 1958, this Court granted certiorari in the *Greene* case. No. 180, October Term, 1958. This petition is being filed promptly and before judgment in the Court of Appeals (*cf. Brown* v. *Board of Education*, 344 U.S. 1, 3; *Bolling* v. *Sharpe*, 347 U.S. 497, 498) in the belief that a pro forma affirmance of petitioner's case by the Court of Appeals on the authority of *Greene* would not assist this Court in disposing of the grave constitutional issue involved, and with confidence that the record herein will materially amplify and illuminate that issue.

REASONS FOR GRANTING THE WRIT

I

The Government's Practice of Branding a Worker a Security Risk, Thus Depriving Him of Employment and Means of Livelihood, Without Affording Him an Opportunity to Confront His Accusers, Calls for Review by This Court

1. Constitutional questions of grave importance are presented by Governmental action branding a worker a "security risk," thus depriving him of his employment and means of livelihood, on the basis of a "hearing" wherein fair opportunity to defend is denied the accused. Where the charges are based on accusations supplied by faceless informants unavailable for examination either by the accused individual or the Hearing Board, there is no such fair opportunity and the purported hearing is arbitrary governmental action and a travesty on democratic processes. The power of the federal courts to review and redress such arbitrary governmental action presents an important question of federal law which has not been, but should be, settled by this Court.

Indeed, this Court has twice granted certiorari for the purpose of resolving the confrontation issue in the case of Government employees. *Bailey* v. *Richardson*, 341 U.S. 918; *Peters* v. *Hobby*, 349 U.S. 331. The issue is no less significant in the case of industrial plant workers whose very livelihood is at stake in a Defense Department security program applicable to more than three million employees. The issue here presented regularly arises under Defense Department Regulations denying confrontation[7] and will continue to arise until its final resolution by this Court.

2. There is a clear conflict between the decision of the Court of Appeals for the Ninth Circuit in *Parker* v. *Lester*, 227 F. 2d 708, and the decision in petitioner's case and in *Greene*. In the *Parker* case, contrary to the holding below, the Ninth Circuit Court of Appeals not only found that a denial of security clearance on charges by unconfronted

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[7] The Defense Department's Industrial Security Review Regulation (see Appendix C, p. 34, *infra*) provides in relevant part that no "information which might compromise investigative sources or methods or the identity of confidential informants, will be disclosed to any contractor or contractor employee, or to his lawyer or representatives . . ."

informants violates the constitutional rights of seamen, but upheld the jurisdiction of the federal courts to afford relief against such violation.[8]

3. The holding in petitioner's case and in *Greene* likewise conflicts with decisions of this Court. Whether petitioner's access to classified defense information, upon which depends his job and means of livelihood, is denominated a "right" or a "privilege", he may not be branded a risk and denied clearance pursuant to a Governmental procedure which is patently arbitrary and unfair. *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123; *Wieman* v. *Updegraff*, 344 U.S. 183; *Schware* v. *Board of Bar Examiners*, 353 U.S. 232; *Speiser* v. *Randall*, 357 U.S. 513, 518-19.

Moreover, the ruling in *Greene* and in petitioner's case that no "justiciable controversy" is presented by a prayer for relief from arbitrary security procedures plainly conflicts with this Court's ruling in *Harmon* v. *Brucker*, 355 U.S. 579. If "judicial relief is available to one who has been injured by an act of a governmental official which is in excess of his express or implied powers," as this Court held in *Harmon* in the case of a stigmatic military discharge, certainly such relief is equally available to one deprived of his livelihood by a stigmatic security finding unauthorized by statute and contrary to constitutional guarantees.

Each of these three grounds for certiorari appears adequate. Elaboration would hardly seem necessary since this Court only recently deemed substantially the same grounds adequate for granting certiorari in *Greene* to

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[8] The Government suggests that *Parker* is somehow different from the cases of petitioner and of Greene because Coast Guard clearance was required as a condition precedent to employment as a seaman on private ships. But Defense Department clearance is no less required as a condition precedent to employment as a tool maker in private industrial plants handling classified information.

review the confrontation issue. The only remaining question is whether concurrent consideration of petitioner's case will assist this Court in resolving that vital issue now pending before the Court.[9] We turn now to that question.

II

The Record in Petitioner's Case Provides Material Illumination and Amplification of the Confrontation Issue Now Pending Before This Court

This Court might well desire, in deciding an issue of first instance vitally affecting the lives and livelihood of millions of American workers, to have before it more than one set of facts illustrating the operation of the non-confrontation policy. And this might well be true even though both illustrations of the operation of the non-confrontation policy were factually quite similar. Here, however, we respectfully suggest that the record in petitioner's case will not only add a broader factual basis for this Court's determination, but will also present the confrontation issue to the Court even more sharply defined and more fully documented than does the record in *Greene*.

(i) The question in petitioner's case is clearly one of fact —whether petitioner was a member of the Communist Party in 1942-1943—and confrontation is essential to a meaningful resolution of this question of fact. The question in *Greene*, on the other hand, is not essentially the truth or falsity of the factual allegations against Greene, but rather the "significance of the matters set forth in the statement of reasons" on the issue of his security reliability (Pet., p. 10). The Government even suggests, in its opposition to Greene's petition (p. 16), that "the essential facts . . .

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[9] Under the Court's schedule of arguments, the granting of certiorari will permit concurrent consideration of this case with *Greene* without delaying argument or decision in the latter.

were admitted at the hearing", affording "a rational basis for denying him access to classified information. . . ." Without in any way accepting the Government's suggestion, it is noteworthy that no such contention can possibly be raised by the Government in petitioner's case.

(ii) Confrontation is far more indispensable to determining the truth or falsity of factual charges than to evaluating the "security-reliability" significance of admitted facts. Thus, petitioner presents the Court with a case in which confrontation is a *sine qua non* of a fair result. The Hearing Board accepted the charges supplied by unknown and unexamined accusers even though petitioner and eleven other witnesses, under cross-examination and penalty of perjury, swore to facts which made the charges totally implausible. If petitioner and his eleven sterling witnesses could not prevail against patently implausible accusations of unknown accusers, we find it difficult to conceive of a fair result in any case involving a major factual conflict.[10]

(iii) Indeed, the Board's preferring of the accusations by unknown informers over the open record made by petitioner and his eleven witnesses, is rendered inevitable not only by the absence of cross-examination, but equally, if not more so, by the Board's inability to evaluate the charges of accusers the Board itself never saw. There can be no doubt on the record at bar that petitioner's faceless accusers were not only unknown and unseen by petitioner, but also unknown and unseen by the Board members themselves.[11]

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[10] The defenders of a security program predicated on unconfronted accusers have always made much of the fact that an accused is accorded an opportunity at a "hearing" to present his side of the case and witnesses on his behalf. Undoubtedly this opportunity to rebut accusations by faceless informers by presenting affirmative evidence is of value when the issue is one of interpreting and explaining away admitted facts. We suggest, however, that this opportunity to present evidence is meaningless where, as here, the issue is one of controverting facts asserted by unknown accusers.

[11] See *supra*, n. 6, p. 8.

Certainly, in determining whether non-confrontation renders security hearings arbitrary and unlawful, this Court will want to consider the circumstance at bar that the deciding agency itself, as well as the accused, was denied benefit of confrontation.

(iv) Moreover, the Board's inability to evaluate the charges of informants whom the Board itself never saw was compounded by the fact that the Board was considering varying degrees of hearsay allegations against petitioner. Even a cursory examination of the anonymous synopses of information supplied by petitioner's accusers (S. Ex. 30) demonstrates that the Board was considering their second-, third- and even fourth-degree hearsay allegations.[12]

(v) The blind acceptance of the information supplied by the informants is all the more arbitrary since petitioner's accusers could not possibly have been Government undercover agents. Whatever claim to a national security interest might conceivably be made for the protection of the anonymity of Governmental agents presently in the councils of the Communist Party, the record here is clear that the information against petitioner was not supplied by any contemporaneous agent within the Party.[13] In weighing the Government's nebulous "security" claims, this Court may well want to consider the type of informants shielded from disclosure by the policy against confrontation.

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[12] *Ibid.*

[13] Had the information concerning petitioner come from government agents infiltrating the Communist Party while petitioner was allegedly a member, we cannot conceive of the Government's delaying security proceedings against him from 1942 or 1943 until 1956. Indeed, the synopses of accusations against petitioner make quite clear that the adverse information was derived from the "recollection" of private informants about events long past (S. Ex. 30). Clearly, not undercover Government agents but mere casual informants are involved; one cannot believe that such agents would first have reported the possibility of petitioner's continuing membership in the Party and then later have asserted his expulsion therefrom in 1943 (*supra*, p. 7).

In the final analysis, this Court will have to weigh the conflicting interests described by the Solicitor General in presenting the Government's position to this Court in the related *Bailey* case: "The harm to the individual must be weighed against the harm to the public. The problem is one of 'balancing the conflicting individual and national interests involved' . . ." The significant contribution of petitioner's case towards the balancing of these interests is in the clarity of its demonstration on the one hand of the inevitable unfairness in procedure and result when confrontation is denied and, on the other hand, of the absence of any genuine national interest justifying the denial of confrontation.

Conclusion

For the foregoing reasons, it is respectfully requested that the petition for a writ of certiorari be granted.

Respectfully submitted,

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APPENDIX A

Opinion and Judgment of the United States District Court for the District of Columbia

THE COURT: The Court has studied the pleadings, the exhibits in this case at great length. I have been concerned about the administrative proceedings, because of the periods of delay, and the apparent uncertainty on the part of the Defendants in reaching some final conclusion in the case.

As counsel knows, however, the Court has no authority to substitute its judgment for that of the Executive officers charged with the discharge of these duties. I believe the Court's ruling in this case, as counsel for the Plaintiff concedes, is entirely bound by the holding of the Court of Appeals in the case of Greene v. McElroy. I have been unable to distinguish this case from the ruling in the Greene case.

Accordingly, the Court is required to grant the Defendants' motion for summary judgment and to deny Plaintiff's motion.

• • • • •

ORDER

This cause having been heard on plaintiff's and defendants' motions for summary judgment and defendants' motion to dismiss, and the Court having considered the entire record, the pleadings, affidavits, stipulation of facts with attached exhibits, and memoranda of points and authorities filed herein, and there having been a full and complete hearing and the Court having found that there is no genuine issue as to any material fact and that the defendants are entitled to judgment as a matter of law under the controlling ruling of the United States Court of Appeals for the District of Columbia Circuit in *Greene* v. *McElroy*, 254 F. 2d 944, it is therefore, by the Court this 14th day of October, 1958:

ORDERED that the plaintiff's motion for summary judgment be, and the same hereby is, denied; and it is

FURTHER ORDERED that the defendants' motion for Summary Judgment be, and the same hereby is, granted, and that the complaint be, and the same hereby is, dismissed with costs to the defendants.

(S.) EDWARD A. TAMM,
United States District Judge.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No 13,978

WILLIAM L. GREENE, APPELLANT,

v.

NEIL M. MCELROY, Secretary of Defense, et al., APPELLEES.

Appeal from the United States District Court for the District of Columbia

Decided April 17, 1958

Mr. Carl W. Berueffy for appellant.

Mr. Donald B. MacGuineas, Attorney, Department of Justice, with whom *Assistant Attorney General Doub* and *Messrs. Oliver Gasch*, United States Attorney, *Paul A. Sweeney* and *Miss Beatrice M. Rosenhain*, Attorneys, Department of Justice, were on the brief, for appellees.

Before WILBUR K. MILLER, WASHINGTON and DANAHER, Circuit Judges.

WASHINGTON, *Circuit Judge*: This case challenges the revocation of a "security clearance" by the Secretary of the Navy. The Secretary's act withdrew from appellant Greene, an employee of a private corporation holding Defense Department contracts, access to classified defense information. The instant appeal seeks reversal of an order of the District Court, 150 F.SUPP. 958 (D.D.C. 1957), dismissing appellant's complaint for lack of a justiciable controversy between appellant Greene on the one hand, and the Secretary of Defense and his subordinate the Secretary of the Navy on the other.

I

The facts of the case are these: Upon graduation from the Guggenheim School of Aeronautics at New York University in 1937, appellant Greene was hired as a junior engineer by Engineering & Research Corporation (ERCO), a manufacturing company. From that time until he was dismissed by the corporation in April 1953, he worked for ERCO continuously (save for a short period in 1940 not here relevant). At the time of his dismissal he was ERCO's Vice President in charge of Engineering and General Manager at an annual salary of $18,000 plus bonuses. He then possessed Government clearance for access to "secret" information.[1] His dismissal followed receipt by ERCO's President of the following letter dated April 17, 1953, from appellee Secretary of the Navy:

> "I have reviewed the case history file on William Lewis Greene and have concluded that his continued access to Navy classified security information is inconsistent with the best interests of National security.
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> "In accordance with paragraph 4.e. of the Industrial Security Manual for Safeguarding Classified Security Information,[2] therefore, you are requested to exclude

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[1] Greene was cleared for access to "confidential" information by the Army on August 9, 1949; for "top secret" by the Assistant Chief of Staff, G-2, Military District of Washington on November 9, 1949; for "top secret" by the Air Materiel Command on February 3, 1950; and for "secret" by the Industrial Employment Review Board on January 29, 1952.

[2] The Industrial Security Manual for Safeguarding Classified Matter was issued by the Department of Defense in January 1951 and subsequently revised. For current edition see 2 Gov't Sec. & Loy. Rep. 25:95 (Feb. 1957). The Manual is incorporated by reference in the Department of Defense Security Agreement (DD Form 441) which must be executed by all defense contractors who wish to secure facility security clearance. Paragraph 4(e) of the Manual (now par. 5(c)) provided:

> "e. The Contractor shall exclude (this does not imply the dismissal or separation of any employee) from any part of its plants, factories, or sites at which work for any military department is being performed, any person or persons whom the Secretary of the military department concerned or his duly authorized representative, in the interest of security, may designate in writing."

William Lewis Greene from any part of your plants, factories or sites at which classified Navy projects are being carried out and to bar him access to all Navy classified security information.

"In addition, I am referring this case to the Secretary of Defense recommending that the Industrial Employment Review Board's decision of 29 January 1952 be overruled."

One week later the President of ERCO, acting pursuant to the security agreement which ERCO had executed,[3] replied to the Secretary, in part:

> "In accordance with your request, please be advised that since receipt of your letter this company has excluded Mr. Greene from any part of our plants, factories or sites and barred him access to all classified security information."

Appellant subsequently requested, and was accorded, extensive administrative hearings, the details of which need not be recounted here. At these hearings appellant was given a thirteen count specification of the reasons for the revocation of his clearance. The Government put on no witnesses, nor did it disclose the investigative reports on which the specifications were based. Appellant took the stand, and presented a number of witnesses. He was finally advised, as of May 28, 1954, that "the granting of clearance to you for access to classified information is not clearly consistent with the interests of national security."

In August 1954 appellant filed this action in the District Court seeking a judgment (1) declaring "illegal, null, void and of no effect . . . the acts of the defendant [Secretary of the Navy] Anderson and all acts of the defendants in

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[3] It was stipulated between the parties that "Under date of June 5, 1951, the United States, acting through the Navy Department, entered into a security agreement with Engineering and Research Corporation. . . . During April, 1953, the Navy Department and Engineering and Research Corporation were parties to classified procurement contracts. . . . All of such classified procurement contracts incorporated by reference the aforesaid Industrial Security Manual, including Paragraph 4c thereof."

pursuance thereof, in advising plaintiff's employer that plaintiff could not be employed," and (2) ordering the appellees "to advise the plaintiff's employer, Engineering and Research Corporation, that the letter of April 25 [17?] signed by . . . Anderson . . . is illegal, null, void, and of no effect."

In February 1955—before Greene's lawsuit had come to issue—the Department of Defense issued its Industrial Personnel Security Review Regulation, Department of Defense Directive 5220.6, 20 FED.REG. 1553 (1955), superseding the joint directive under which Greene's clearance had been revoked. The new directive, *inter alia*, established revised procedures for screening industrial personnel, and the Board set up thereunder was given authority to review prior decisions of regional boards "on the grounds of newly discovered evidence or for other good cause shown."[4] The standard under the new regulation remained that "clearance shall be denied or revoked if it is determined, on the basis of all the available information, that access to classified information by the person concerned is not clearly consistent with the interests of the national security."[5] At Greene's request the new Board undertook to reexamine his case. After submission of further briefs, the Director, Office of Industrial Personnel Security Review, notified appellant's attorney on March 12, 1956, that the Review Board had affirmed the May 1954 decision.

After this adverse decision the case in the District Court proceeded to trial. A stipulation of facts was entered. Both parties moved for summary judgment; the Government also moved to dismiss. It was admitted that appellant had exhausted his administrative remedies. The District Court denied appellant's motion and granted appellees' motions in a memorandum opinion. The Court held, relying on paragraph 4.e. of the Industrial Security Manual, see note 2, *supra*, that there was no justiciable controversy:

> "It is fundamental when one presumes to accept a contractual offer then that offer must be accepted in terms,

[4] DOD Directive 5220.6, par. 24.a, 32 C.F.R. § 67.5-2(a) (Supp. 1957).
[5] DOD Directive 5220.6, par. 12, 32 C.F.R. § 67.3-1 (Supp. 1957).

and one of the terms here, as has been said, related to security controls. The necessity for such is obvious. If the plaintiff's employer did not see fit to accept and conform, it had perfect freedom not to enter into the contract. On acceptance of the offer in terms, it was obliged in the circumstances to carry out its essentials, the presumed result of which was the loss by the plaintiff of his position. But this cannot be said in any degree to be the fault of the Government, for here, through properly constituted authority, it was exercising its right to protect itself against threats to its survival, and as far as the action of an individual was concerned, this action taken, even envisioning the result to the plaintiff, fails to set forth any invasion of his legal rights and, therefore, as has been said, there is no justiciable controversy and the Government's motion for summary judgment is granted.

"Assuming arguendo he was entitled to hearing and review, he was accorded such and an examination of the extensive and repetitive record fails to show any violation of procedural due process. It should be noted also that the hearings held in the instant case apparently are exempted from the requirements of the Administrative Procedure Act, 5 U.S.C.A. § 1001 et seq., as hearings held 'by regulation, rule, custom, or special dispensation; not . . . held by compulsion.' Wong Yang Sung v. McGrath, 1950, 339 U.S. 33, 50, 70 S.Ct. 445, 454, 94 L.Ed. 616." 150 F.Supp. 958, 959-60 (D.D.C. 1957).

This appeal followed.

It should be noted at the outset that Greene does not here contend that the officials of the Department of Defense have failed to comply with the relevant provisions of the various industrial security regulations under which they proceeded against him. To that significant extent at least, this case differs from *Peters* v. *Hobby*, 349 U.S. 331 (1950); *Service* v. *Dulles*, 354 U.S. 363 (1957); and *Cole* v. *Young*, 351 U.S. 536 (1956). In each of those cases the issue treated by the Court was the compliance *vel non* by executive officers with applicable statutes or regulations. And in each of those

cases the Supreme Court found lack of compliance. See also *Stewart* v. *Dulles*, —— U.S.App.D.C. ——, 248 F. 2d 602 (1957); cf. *Vitarelli* v. *Seaton*, —— U.S.App.D.C. ——, —— F. 2d —— (1958). It should further be noted that appellant does not claim that the contracts on which he seeks to work are not validly labelled "classified."

The relief Greene seeks is a declaration that he was barred from access to classified material in a manner which violates the Constitution. He seeks further a court order restoring him to *status quo ante: i.e.*, an order which will make it possible for Erco to rehire him. Thus, in essence, he seeks to compel the Government to disclose its classified defense information to a person—himself—whom the Secretary of Defense considers unworthy of such access.

II

We consider first Greene's contention that the Secretary lacked power to take the action here challenged. He does not argue that the executive lacks all power—inherent or statutory—to classify certain defense information. Nor does he suggest that the subject matter of the Erco contracts was not properly labelled "secret." Rather he argues that the Secretary possesses only limited powers—powers circumscribed by the Fifth Amendment—to decide who shall have access to that classified material.

The Government contends that it possesses statutory authority to restrict access to classified defense information,[6] stemming from Rev.Stat. § 161 (1875), 5 U.S.C. § 22 (1952), which provides:

> "The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

[6] It should be noted that at this point we are discussing only the power of the Secretary to withhold classified defense information. We are *not*, at this point, discussing the withholding from Greene of the reports of informants and Federal Bureau of Investigation reports in the proceedings in which Greene challenged the revocation of his clearance.

Additionally, the Government relies on the Armed Services Procurement Act of 1947, 62 STAT. 21, 41 U.S.C. §§ 151-61 (1952), which provides, in part:

> "§ 151.(c) All purchases and contracts for supplies and services shall be made by advertising, as provided in section 152 of this title, except that such purchases and contracts may be negotiated by the agency head without advertising if—
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> "(1) determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress;
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> • • • • •
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> "(12) for supplies or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed;
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> • • • • •
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> "§ 153 . . . contracts negotiated pursuant to section 151(c) of this title may be of any type which in the opinion of the agency head will promote the best interests of the Government. . . ."

In this latter statute Congress gave to the Defense Department power—during an emergency[7]—to purchase its supplies by means of negotiated contracts, rather than through public, competitive bids. And it seems to us that Congress specifically gave to the Secretary of Defense broad discretion to determine in what manner the "character, ingredients, or components" covered by the contract should be safeguarded from disclosure. We think that the Procurement Act permits the Secretary of Defense to classify defense information for purposes like the present one. Thus we need not determine whether the "housekeeping" statute, 5 U.S.C. § 22 (1952), is an independent

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[7] A state of national emergency was declared by the President on December 16, 1950. Proclamation No. 2914, 15 FED.REG. 9029. This proclamation was in effect during all of the administrative proceedings in this case.

source of executive authority for withholding defense or other types of executive information.

Furthermore, Executive orders specifically direct department heads to make appropriate provision for safeguarding classified defense information in accord with the congressional authorization of the department head to enter into negotiated contracts.[8] Executive Order No. 10501, and its predecessor Executive Order No. 10290, in their full terms, provide an adequate guide to the Secretary for protecting certain defense information from the risk of improper disclosure during industrial operations, and for enabling him to determine when "the character, ingredients, or components . . . should not be publicly disclosed."

Further, we think that the Secretary has, and of necessity must have, wide latitude in designating persons qualified for access to classified defense information in situations like the present—namely, where the problem relates to the selection of persons to be given that information for the purpose of designing or producing for the Government weapons or other defense materials.[9] Authority of that sort is a necessary adjunct to the power and duty to defend the

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[8] See, for example, Executive Order No. 10290, 16 FED.REG. 9795, 9799 (1951), which provides:

"30.* * * *

"b. *Outside the Executive Branch.* Classified security information shall not be disseminated outside the Executive Branch by any person or agency having access thereto or knowledge thereof except under conditions and through channels authorized by the head of the disseminating agency, even though such person or agency may have been solely or partly responsible for its production."

See also Executive Order No. 10501, 18 FED.REG. 7049 (1953) at Section 7(b).

[9] We are not dealing here with the vexed questions of the right of Congress, or the press, or the public, to be informed of defense operations generally, or to inspect particular documents. On this subject, see Mitchell, *Government Secrecy in Theory and Practice: "Rules and Regulations" as an Autonomous Screen*, 58 COLUM.L.REV. 199 (1958); Wolkinson, *Demands of Congressional Committees for Executive Papers*, 10 FED. BAR J. 103, 223, 319 (1949); Bishop, *The Executive's Right of Privacy: An Unresolved Constitutional Question*, 66 YALE L.J. 477 (1957); 40 OPS. ATT'Y GEN. 45 (1941). See also HAND, THE BILL OF RIGHTS 17-18 (1958).

security of the Nation and, in time of national emergency,[10] to enter into negotiated contracts—contracts of "any type which in the opinion of the agency head will promote the best interests of the Government." One of the primary functions of government is to preserve the national existence. In the exercise of that function, the Government has concluded that secret designs and processes for the production of its own weapons must be protected from disclosure to any persons except those regarded as trustworthy.

Since the Secretary has power to label information "secret" and to designate certain persons for access to that information, *a fortiori* he has power to make regulations to guide himself and his subordinates in such labeling and designation. We are not called upon to decide whether in our view all the regulations he has from time to time promulgated in this field are in every particular or in every possible situation valid and effective. It is enough to say that in our view the general program for industrial security, as reflected in the regulations cited above,[11] does not exceed his authority. We point out in this connection that the regulations are designed to give industrial employees whose trustworthiness is challenged a reasonable measure of information as to the Government's reasons for the challenge, together with an opportunity to make a defense, and to appeal an adverse decision.

III

Appellant claims that the regulations operate to deprive him of his occupation without due process. But the Government has not here attempted to regulate an entire branch of the working population, regardless of the lack of any direct relationship of the tasks of a particular worker to the requirements of the national security, *cf. Parker* v. *Lester*, 227 F.2d 708 (9th Cir. 1955); Brown & Fassett, *Security Tests for Maritime Workers: Due Process under the Port Security Program*, 62 YALE L.J. 1163 (1953). Nor

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[10] See fn. 7, *supra*.

[11] See fns. 2 and 4, *supra*, and DOD Directive 5220.6, 20 FED.REG. 1553 (1955).

has it sought to exclude Greene from serving the general public in those aspects of his profession not connected with secret Government information. *Cf. Schware* v. *Board of Bar Examiners*, 353 U.S. 232 (1957) (involving complete exclusion from law practice, after procedures based on unjustified inferences as to moral character); *Konigsberg* v. *State Bar*, 353 U.S. 252 (1957). This is not a case such as *Truax* v. *Raich*, 239 U.S. 33 (1915), relied on by appellant, where discriminatory governmental action was taken against a class (there, aliens) in such terms as to affect "the conduct of ordinary private enterprise," *id.* at 40, and to deny "the right to work for a living in the common occupations of the community," *id.* at 41. Rather, the Government has here denied Greene access to its military secrets, as contained in its classified documents, under a program having a direct relationship to the requirements of the national defense, and not inherently unreasonable in its coverage or procedures.

Greene points to the fact that he was not confronted with his accusers, and that confidential reports were not revealed to him. But, in our view, confrontation with one's accusers is clearly not required in circumstances like the present. It may be noted that in the case of Federal employees Congress long ago provided in the Lloyd-LaFollette Act that "no examination of witnesses nor any trial or hearing shall be required" when dismissals are made under the provisions of that Act. 37 STAT. 555 (1912), as amended, 5 U.S.C. § 652(a) (1952). A limited form of hearing is provided under the Veterans Preference Act of 1944, for those entitled to its benefits. 58 STAT. 390 (1944), as amended, 5 U.S.C. § 863 (1952). And the Loyalty Order of March 21, 1947, Executive Order No. 9835, 12 FED.REG. 1935, granted hearings to employees who sought them in loyalty matters covered by that order. But mandatory confrontation with accusers is unknown, so far as we know, in dismissals of Federal employees, and has been since the beginning of our Government. See *Bailey* v. *Richardson*, 86 U.S.App.D.C. 248, 182 F.2d 46 (1950), aff'd by an equally-divided Court, 341 U.S. 918 (1951); *cf. Vitarelli* v. *Seaton*, *supra*. Surely appellant is entitled to no more than is available to civil

servants, under existing statutes and existing interpretations of the Constitution.

Much the same must be said of the Government's refusal to disclose to appellant confidential reports of the FBI and other investigative agencies. In certain circumstances, it is true, the courts have penalized the Government for its refusal to disclose information. For example, the courts have said that if the Government brings a criminal prosecution against a person and refuses to disclose certain information necessary for a proper defense, the Government's prosecution must fail. See *Jencks* v. *United States*, 353 U.S. 657 (1957); *cf. United States* v. *Reynolds*, 345 U.S. 1 (1953); *Totten* v. *United States*, 92 U.S. (2 Otto) 105 (1875). But in none of the instances which we have discovered have courts actually ordered the Government to disclose information contrary to its own wishes. In the present case, the only sanction the courts could employ against the Government for failure to disclose all of the information used against Greene would be to declare the revocation of Greene's clearance invalid. If this had any practical effect at all—and courts seldom issue orders which have no practical effect—it would amount to ordering his restoration to access to classified information. This in turn would require the executive to disclose a state secret to Greene or to cancel its contracts with Erco. No court has yet forced the Government to choose between such alternatives—either of which might compromise the security of the country.[12]

To quote from the observations of Judge Wyzanski in

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[12] We have not overlooked the decision of the Supreme Court in Harmon v. Brucker, 355 U.S. 579 (1958). The instant case differs from that in many ways. The main difference for present purposes is that Harmon was not seeking to remain in the Army. Rather he was seeking only to have the Army comply with its own discharge authority under applicable statutes and regulations, and issue him an honorable discharge. Here Greene is essentially seeking to revert to his former status with access to classified defense information. Had Harmon sought an order requiring the Secretary of the Army to retain him in military service, an entirely different case would have been presented.

Von Knorr v. *Miles*, 60 F. Supp. 692 (D. Mass. 1945), a somewhat similar case arising during World War II:

> "Two interests are in competition and must be considered: the government's concern to prevent both sabotage and disclosure to the enemy of secret processes, statistics and information; and the private individual's concern to go where he pleases and engage in such work as is offered him."

After concluding that no constitutional right of the plaintiff Von Knorr had been infringed,[13] Judge Wyzanski went on to say:

> "It is hardly necessary to add that these conclusions of law do not imply that this court believes that it is desirable, as distinguished from legal, for a government, no matter how absolute its power may be, to deny a chance for employment to any citizen merely on the basis of suspicion. Military commanders, like other authorities, will no doubt find it possible as well as just in most cases to give an em-

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[13] The following is pertinent, though we need not go so far in the instant case:

> "Notice, hearing, counsel and the like are admittedly usually appropriate criteria of due process of law. But these guarantees have significance only if in the end the government's right to act turns on an official finding that certain facts exist. Compare Morgan v. United States, 304 U.S. 1, 58 S.Ct. 773, 82 L.Ed. 1129. Where in rare cases such as orders excluding persons from defense plants in war time, the government's right to act is absolute and not dependent upon the facts concerning, or the merits of, any particular case, the formalities of a notice, hearing and counsel are not requisite. Compare United States v. Juy Toy, 198 U.S. 253, 263, 25 S.Ct. 644, 49 L.Ed. 1040. No matter what evidence might be offered by counsel for the government or counsel for the individual, the government would remain legally free to disregard the testimony and rely upon its uncorroborated suspicions. Since in this highly exceptional case, because of its vital interest in war materials and war secrets during war time the government's exclusionary powers are complete, it can refuse admittance to defense plants without giving an explanation, without listening to a protest and without the semblance of a trial." 60 F.Supp. at 971.

ployee notice of the facts which create their suspicion about him and a chance to present his side of the case. Even where power is free of judicial restraint, those who wield it may impose upon themselves self-restraint. And they may accept as canons for their conduct the standards of procedure which in the overwhelming majority of cases are regarded as fundamental to fair play." 60 F. Supp. at 969-71.

Although the First Circuit vacated the District Court judgment on other grounds, sub nom. *Von Knorr* v. *Griswold*, 156 F. 2d 287 (1st Cir. 19[illegible], the Court of Appeals, speaking through Judge Magruder, approved the holding quoted above:

> "If we are correct in the foregoing, the court below should have dismissed the complaint for lack of jurisdiction. We recognize that the matter is not so clear as it might be. Therefore we deem it proper to add that if, contrary to our view, the letter of August 13, 1943, should be deemed in legal effect an order of the Secretary of War, disobedience of which would have subjected Cities Service Oil Company to the penalties of the Act of March 21, 1942, then we would agree with the district court that the order, so regarded, violated no constitutional right of the plaintiff. The full and satisfactory discussion of this phase of the case in the opinion of Judge Wyzanski below (D.C., 60 F. Supp. 962) needs no elaboration by us." 156 F. 2d at 292.

Our views are substantially similar to those expressed by Judge Wyzanski and Judge Magruder. And what has so far been said is an answer, we think, to Greene's contention that he is being "punished" without due process of law. His argument essentially is that because he once was allowed to see confidential documents he has acquired a "status" which cannot be taken from him without full adversary proceedings, attended with most of the safeguards known to the criminal law. We think this ignores the necessities of the Government, and the public interest in maintaining the security of the Nation. As we have indicated, we find no basis for it in the law.

IV

We have no doubt that Greene has in fact been injured. He was forced out of a job that paid him $18,000 per year. He has since been reduced, so far as this record shows, to working as an architectural draftsman at a salary of some $4,460 per year. Further, as an aeronautical engineer of considerable experience he says (without real contradiction) that he is effectively barred from pursuit of many aspects of his profession, given the current dependence of most phases of the aircraft industry on Defense Department contracts not only for production but for research and development work as well. Thus, it seems unrealistic to say —as does the Government in its brief—that:

> "The Secretary's letter presented ERCO with three choices: (1) it could have continued to employ appellant on any work except that requiring access to Navy classified information; (2) it could have continued appellant's employment and declined to perform Navy classified contracts; or (3) it could have concluded it did not, in the circumstances, choose to continue appellant's employment. That ERCO chose to discharge appellant was its own decision, one neither suggested nor required by appellees."

As a practical matter—given Greene's position as Vice President and General Manager and given the applicable Industrial Security regulations—the Government caused Greene to be dismissed from his job at ERCO.[14] The small

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[14] In May 1954, when the revocation of Greene's clearance was affirmed, the applicable facility clearance regulations required that all officers and key personnel of a corporation holding classified defense contracts must have clearance. See 32 C.F.R. § 72.8 (1955). This requirement has been carried forward into subsequent revisions of the program. See 32 C.F.R. § 72.2-107 (Supp. 1956); Security Manual for Safeguarding Classified Information, Par. 16, 2 Gov't Sec. & Loy. Rep. 25:111 (1957).

To some extent the Government acknowledges that withdrawal of clearance may mean the firing of the employee. Provision is made for payment of lost earnings to a contractor employee where, after suspension of clearance, the final determination is favorable to the individual concerned. See Industrial Security Review Regulation, 32 C.F.R. § 67.5-4 (Supp. 1957).

contractor has no effective choice when that choice is either to continue to do business with the Government or to do virtually no business at all. Nor do we doubt that, following the Government's action, some stigma, in greater or less degree, has attached to Greene.

The reality of the injury, however, does not mean that Greene is entitled, without more to judicial relief. There must be a "justiciable" controversy—one which the courts can finally and effectively decide, under tests and standards which they can soundly administer within their special field of competence. Here there is no such controversy. As we have seen, Greene makes no claim of lack of compliance by the Government with its own regulations. He attacks the Secretary's decision on its merits and as a matter of constitutional right. But for a court to hear de novo the evidence as to Greene's fitness to be assigned to a particular kind of confidential work would be a bootless task, involving judgments remote from the experience and competence of the judiciary. Indeed, any meaningful judgment in such matters must rest on considerations of policy, and decisions as to comparative risks, appropriate only to the executive branch of the Government. It must rest also on a mass of information, much of it secret, not appropriate for judicial apprasial. See *Dayton* v. *Dulles*, —— U.S. App. D.C. ——, —— F. 2d ——(1957), cert. granted, 335 U.S. 911 (1958); *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 319-22 (1936).

A direct Government employee normally has procedural rights conferred by Congress, which the courts will protect. See cases cited in *Vitarelli* v. *Seaton, supra*, at note 1. But even in the case of a Government employee the courts will not inquire into the merits of a dismissal: they will inquire whether required procedures have been observed, or an applicable statute violated, but they will not—for example—attempt to determine whether an employee is or is not a "security risk," or is "untrustworthy." *Vitarelli* v. *Seaton, supra*, at note 7. No more can the courts examine the merits of Greene's claim that he is trustworthy. In many instances, indeed, such a course would be fruitless: if the official in charge is convinced of a man's unreliability, the

entire situation might be such that he could not in conscience permit the contract with the employer to remain in effect.

The personal tragedy revealed by this recital needs no emphasis. As we have recognized, the reality of the injury suffered by Greene—whether or not deserved—is perfectly clear. So, too, is the risk which the United States must take in denying itself the benefit of the services of a man apparently so proficient in the science of modern warfare. A government which is too cautious in such matters may ultimately have few secrets to protect, or able workers to serve it.

In a mature democracy, choices such as this must be made by the executive branch, and not by the judicial. If too many mistakes are made, the electorate will in due time reflect its dissatisfaction with the results achieved. It would be an unwarranted interference with the responsibility which the executive alone should bear, were the judiciary to undertake to determine for itself whether Greene or any other individual similarly situated is in fact sufficiently trustworthy to be entitled to security clearance for a particular project.

For these reasons, the order of the District Court must be

Affirmed.

APPENDIX C

STATUTES AND REGULATIONS

Industrial Personnel Security Review Regulation, 20 Fed. Reg. 1553, 32 CFR, Part 67 (Supp. 1957), Section 67.1-4:

> *Release of information.* All personnel in the Program will comply with applicable directives pertaining to the safeguarding of classified information and the handling of investigative reports. No classified information, nor any information which might compromise investigative sources or methods or the identity of confidential informants, will be disclosed to any contractor or contractor employee, or to his lawyer or representatives, or to any other person not authorized to have access to such information.

5 U.S.C., § 22, R.S. § 161:

> The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

18 U.S.C., § 798:

> (a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information . . . Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

Armed Services Procurement Act of 1947, 62 Stat. 21, 41 U.S.C., §§ 151-161 (1952):

> 151(c) All purchases and contracts for supplies and services shall be made by advertising, as provided in

section 152 of this title, except that such purchases and contracts may be negotiated by the agency head without advertising if—

(1) determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress; • • •

(12) for supplies or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed; • • •

153 • • • Except as provided in subsection (b) of this section, contracts negotiated pursuant to section 151(c) of this title may be of any type which in the opinion of the agency head will promote the best interests of the Government. • • •

Executive Order 10501, December 15, 1953, 18 Fed. Reg. 7049:

Safeguarding Official Information in the Interests of the Defense of the United States

WHEREAS it is essential that the citizens of the United States be informed concerning the activities of their government; and

WHEREAS the interests of national defense require the preservation of the ability of the United States to protect and defend itself against all hostile or destructive action by covert or overt means, including espionage as well as military action; and

WHEREAS it is essential that certain official information affecting the national defense be protected uniformly against unauthorized disclosure:

NOW THEREFORE, by virtue of the authority vested in me by the Constitution and statutes, and as President of the United States, and deeming such action necessary in the best interests of the national security, it is hereby ordered as follows:

• • • • •

7(b) *Dissemination Outside the Executive Branch.* Classified defense information shall not be disseminated outside the executive branch except under conditions and through channels authorized by the head of the disseminating department or agency, even though the person or agency to which dissemination of such information is proposed to be made may have been solely or partly responsible for its production.

(2730-0)

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No. 504

In the Supreme Court of the United States

OCTOBER TERM, 1958

CHARLES ALLEN TAYLOR, PETITIONER

v.

NEIL MCELROY, A. TYLER POST

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENTS

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

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NEIL MCELROY, A. TYLER PORT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENTS

The petition for a writ of certiorari asks the Court to review a civil case pending on appeal in the Court of Appeals for the District of Columbia Circuit, prior to rendition of judgment by that court, as authorized by 28 U. S. C. 1254 (1) (Pet. 2).

Between February 21, 1941, and September 11, 1956, petitioner, a tool and die maker (milling machine operator) with the Bell Aircraft Corporation, held a "company confidential" security clearance granted by the Corporation in accordance with a security agreement then in effect between the Government and the Corporation (S. Ex. 3).[1] This clearance

[1] The letter "S" refers to the Stipulation of Facts entered into by the parties.

granted petitioner access to "confidential" defense security information (*ibid.*). In order to utilize petitioner on a defense contract requiring clearance for access to "secret" defense security information, the Corporation, in the proper manner, requested petitioner's clearance for access to such information (*ibid.*).

On September 10, 1956, petitioner was advised by the Director of the Office of Industrial Personnel Security Review of the Department of Defense that his existing clearance had been suspended (S. Ex. 7). At the same time petitioner was presented with a detailed "Statement of Reasons" (S. Ex. 7) and was advised that he could reply thereto in writing under oath and submit affidavits by third parties and such other documentary evidence as he might desire in support of his answer (S. Ex. 7). He was further advised that he was entitled to a hearing on the "Statement of Reasons" at which he could appear by counsel, or in person, or in person with counsel, and present evidence in his own behalf including testimony and witnesses (*ibid.*). On September 11, 1956, petitioner's employment with Bell Aircraft was terminated by the Corporation (S. Ex. 8).

On November 1, 2 and 14, 1956, petitioner received a hearing in accordance with the provisions of the Industrial Personnel Security Review Regulation (20 Fed. Reg. 1553) (S., par. 12). On June 14, 1957, he was advised that, on the available information, the granting of clearance to him for access to classified defense information "is not clearly consistent with the interests of national security" (S. Ex. 14). At this

time Bell Aircraft was advised by the Director of the Office of Industrial Personnel Security Review that the decision in petitioner's case was not intended to prevent him from performing such non-classified work as the Corporation might have available for him (S. Ex. 13). On June 14, 1957 petitioner was legally free to institute suit in the District Court, for his administrative remedies were then exhausted. However, instead, on November 22, 1957, petitioner elected to again set in motion the administrative processes of the Review Regulation (20 Fed. Reg. 1553) by requesting the respondent McElroy to reverse the June 14, 1957 determination (S. Ex. 15).

Prior to February 3, 1958, an investigation was instituted to obtain any additional information that might be available and of value in assisting the respondent McElroy to rule on petitioner's request of November 22, 1957 (S. Ex. 17). On April 17, 1958, the Court of Appeals decided the case of *Greene* v. *McElroy*, 254 F. 2d 944, now pending in this Court on writ of certiorari granted October 27, 1958, No. 180, October Term, 1958. On April 24, 1958—and despite the pendency of the administrative proceedings instituted at petitioner's request—petitioner instituted his suit in the District Court.

On May 30, 1958, respondent McElroy rescinded the June 14, 1957 determination and ordered further proceedings conducted under the provisions of the aforementioned Review Regulation (S. Ex. 18). On June 19, 1958, petitioner was served with an Amended Statement of Reasons (S. Ex. 23). Petitioner re-

plied thereto on June 25, 1958 (S. Ex. 24). Hearings thereon were held on July 11, 1958 (S., par. 30) and August 1, 1958 (S., par. 33). A final administrative determination revoking "confidential" and denying "secret" clearance to petitioner was made on October 13, 1958. On October 14, 1958, the District Court ruled that the respondents were entitled to judgment as to a matter of law under the "controlling ruling" of the *Greene* case, *supra* (Pet. App. 16–17).

On October 14, 1958, petitioner filed his Notice of Appeal, and the record was docketed in the Court of Appeals on October 16, 1958.

Petitioner concedes that the substantial issues involved in this case are already before this Court in *Greene* v. *McElroy*, *supra*, in which certiorari recently was granted (Pet. 9–12). Petitioner seeks to invoke the provisions of Rule 20 of the Rules of this Court, not because this case and its issues require immediate settlement from a standpoint of "imperative public importance," for he recognizes that the principal issue which he raises—the confrontation issue—is already before the Court for review. The justification advanced for deviating from the normal appellate processes is that the record in this case would provide a broader factual basis, when coupled with the record in *Greene*, for this Court's determination of the issues raised in *Greene* (Pet. 12).

However, the petition itself demonstrates the similarity of the issues here and in *Greene* and the likelihood that this Court's decision in *Greene* will illuminate or be dispositive of the questions which would be raised here by both the petitioner and the respondents

We do not believe that this case, taken by itself, warrants the "extraordinary" action of certiorari before judgment (*Hamilton Shoe Company* v. *Wolf Brothers*, 240 U. S. 251, 258), as did the cases cited in Rule 20 of this Court's Rules. Nevertheless, we recognize that the Court has granted such petitions in cases where the same issue was already before the Court in another case. Cf. *White* v. *Mechanics Securities Corp.*, 269 U. S. 283, 299; *Johnson* v. *United States Shipping Board*, 280 U. S. 320, 324–325; *Graham & Foster* v. *Goodcell*, 282 U. S. 409, 411–412, 415, n. 2; *United States* v. *Bankers Trust Co.*, 294 U. S. 240, 243; *Porter* v. *Dicken*, 328 U. S. 252; *Brown* v. *Board of Education*, 344 U. S. 1, 3; *Kinsella* v. *Krueger*, 350 U. S. 986, 351 U. S. 470, 473. Accordingly, since the *Greene* case is already before the Court on certiorari, we do not oppose the granting of the petition in this case.

We believe the Court should be informed that this case is now the subject of further review by the Departments of Defense and Justice, and within the near future administrative action thereon may be taken which could moot the case or materially alter the legal situation. In such eventuality the Court will, of course, be advised immediately.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

DECEMBER 1958.

U. S. GOVERNMENT PRINTING OFFICE: 1958

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NEIL MCELROY, A. TYLER PORT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENTS SUGGESTING THAT THE CAUSE IS MOOT

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

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MEMORANDUM FOR THE RESPONDENTS SUGGESTING THAT THE CAUSE IS MOOT

In our memorandum on the petition for a writ of certiorari in this case, we stated (p. 5):

> We believe the Court should be informed that this case is now the subject of further review by the Departments of Defense and Justice, and within the near future administrative action thereon may be taken which could moot the case or materially alter the legal situation. In such eventuality the Court will, of course, be advised immediately.

It is the purpose of the present memorandum to advise the Court of further administrative action re-

cently taken which, in our view, renders this cause moot.

1. It will be helpful first to recall briefly the factual background as it existed when this latest administrative action was taken.

Between February 21, 1941, and September 11, 1956, petitioner, a tool and die maker (milling machine operator) with the Bell Aircraft Corporation, held a confidential security clearance granted by the Corporation in accordance with a security agreement then in effect between the Government and the Corporation (S. Ex. 3).[1] This clearance granted petitioner access to "confidential" defense information (*ibid.*). In order to utilize petitioner on a defense contract requiring clearance for access to "secret" defense security information, the Corporation, in the proper manner, requested petitioner's clearance for access to such information (*ibid.*).

On September 10, 1956, petitioner was advised by the Director of the Office of Industrial Personnel Security Review of the Department of Defense that his existing clearance had been suspended (S. Ex. 7). At the same time petitioner was presented with a detailed "Statement of Reasons" (S. Ex. 7) and was advised that he could reply thereto in writing under oath and submit affidavits by third parties and such other documentary evidence as he might desire in support of his answer (S. Ex. 7) He was further advised that he was entitled to a hearing on the

[1] The letter "S" refers to the Stipulation of Facts entered into by the parties.

"Statement of Reasons" at which he could appear by counsel, or in person, or in person with counsel, and present evidence in his own behalf including testimony and witnesses (*ibid.*). On September 11, 1956, petitioner's employment with Bell Aircraft was terminated by the Corporation (S. Ex. 8).

On November 1, 2 and 14, 1956, petitioner received a hearing in accordance with the provisions of the Industrial Personnel Security Review Regulation (20 Fed. Reg. 1553) (S., par. 12). On June 14, 1957, he was advised that, on the available information, the granting of clearance to him for access to classified defense information "is not clearly consistent with the interests of national security" (S. Ex. 14). At this time, Bell Aircraft was advised by the Director of the Office of Industrial Personnel Security Review that the decision in petitioner's case was not intended to prevent him from performing such nonclassified work as the Corporation might have available for him (S. Ex. 13).

On November 22, 1957, petitioner again set in motion the administrative processes of the Review Regulation (20 Fed. Reg. 1553) by requesting the respondent McElroy to reverse the June 14, 1957, determination (S. Ex. 15).

Upon receipt of the petitioner's request for reversal, the case was placed under review. Shortly thereafter, an investigation was instituted to obtain any additional information that might be available and of value in assisting the Defense Department to rule on petitioner's request of November 22, 1957 (S. Ex. 17). On April 17, 1958, the Court of Appeals decided the

case of *Greene* v. *McElroy*, 254 F. 2d 944, now pending in this Court on writ of certiorari granted October 27, 1958, No. 180, October Term, 1958.

On April 24, 1958—and despite the pendency of the administrative proceedings instituted at petitioner's request—petitioner instituted this suit in the District Court.

On May 30, 1958, respondent McElroy set aside the June 14, 1957 determination and ordered further proceedings conducted under the provisions of the aforementioned Review Regulation (S. Ex. 18). On June 19, 1958, petitioner was served with an Amended Statement of Reasons (S. Ex. 23). Petitioner replied thereto on June 25, 1958 (S. Ex. 24). Hearings thereon were held on July 11, 1958 (S., par. 30) and August 1, 1958 (S., par. 33). A final administrative determination having the effect of revoking confidential" and denying "secret" clearance to petitioner was made on October 13, 1958.

On October 14, 1958, the District Court ruled that the respondents were entitled to judgment as a matter of law under the "controlling ruling" of the *Greene* case, *supra* (Pet. App. 16–17).

On October 14, 1958, petitioner filed a notice of appeal in the Court of Appeals, and the record was docketed in that court on October 16, 1958. The petition for certiorari was filed on November 8, 1958, seeking review prior to the rendition of judgment in the Court of Appeals. The respondents' memorandum on the petition was filed on December 8, 1958. On December 15, 1958, this Court granted the petition and assigned the case for argument immediately preceding the *Greene* case.

2. As stated in our memorandum on the petition, the present case has been the subject of continuing administrative review by the Departments of Defense and Justice. This review has culminated in further administrative action taken on December 31, 1958, which is reflected in the documents reproduced in the Appendix, *infra*, pp. 12–18. In summary, the Acting Secretary of Defense, on that date, signed a Finding and Order in which he found that "the requested clearance of Charles Allen Taylor is in the national interest and I so order, hereby superseding all previous orders in this case" (App., *infra*, p. 12). On the same date, the Defense Department, by letter, advised petitioner (App., *infra*, pp. 12–13), his counsel (App., *infra*, p. 14), the Commander of the Air Material Command (App., *infra*, pp. 15–16), and the Bell Aircraft Corporation (App., *infra*, pp. 16–17) that this determination had been made and that all previous determinations in petitioner's case were thereby superseded. As indicated in the General Counsel's letter of January 6, 1959, to petitioner's counsel (also set forth in the Appendix, *infra*, pp. 17-18), this determination by the Acting Secretary on December 31st expunged all previous findings in the case.[a]

3. This administrative action of December 31, 1958, clearly renders the case moot. Petitioner's suit challenges the prior administrative determination of October 13, 1958 (*supra*, p. 4), that his clearance

[a] A copy of the General Counsel's letter of January 6th has been sent to petitioner, the Air Material Command, and the Bell Aircraft Corporation.

for "confidential" defense information should be revoked and that the requested clearance for "secret" defense information should be denied.[2] This determination has now been completely superseded and expunged. In its place, petitioner has been granted the very clearance he seeks.[3] In addition, the prior findings have been expunged.

The ultimate relief which might be sought in this litigation (but was not in fact sought), *i. e.*, a determination of eligibility for access to classified defense information, has been afforded petitioner by the new administrative order. No further relief from the respondents is available, or can be granted to petitioner in this proceeding. His complaint has been fully answered. Actually, success in the present litigation

---

[2] The petition for certiorari characterizes this suit as "seeking a review of the denial of his clearance without confrontation by his accusers" (Pet. 7).

The prayer for relief in petitioner's complaint in the District Court is as follows:

"1. That this Court declare that plaintiff is entitled to a full and fair hearing before defendants or their agents upon the charges against nim, at which hearing he is given opportunity to be confronted with the witnesses and the evidence upon which the charges are based.

"2. That this Court declare that the determination of June 14, 1957 denying plaintiff access to classified defense information was in violation of his rights under the Fifth Amendment to the Constitution of the United States.

"3. That the defendants Neil McElroy and A. Tyler Port be restrained from enforcing the determination of June 14, 1957, denying plaintiff access to classified defense information and that said denial be reversed, rescinded and annulled.

"4. That plaintiff have such and further relief as to the Court may seem just and proper."

[3] Clearance for "secret" defense information which has been accorded to petitioner also includes clearance for the lower level of "confidential" information.

would have given him nothing more than an overriding of the prior administrative determination (see footnote 2, *supra*); it would not itself have rendered him eligible for clearance. In that sense, the administrative determination of December 31st has given him more than he sought in this judicial proceeding.

This situation is not at all the same as if a private defendant had voluntarily ceased some challenged conduct alleged to be unlawful. In such a case, the mere cessation of the unlawful conduct does not moot the case, unless the likelihood of recurrence is too remote.[4] Here, on the other hand, the suit attacks, not merely some injurious conduct which may or may not recur, but a particular official administrative order; and that order has now been superseded and expunged, and a contrary order substituted. In those and comparable circumstances, this Court has consistently held that the cause (which necessarily takes its vitality from the existence of the order) becomes moot, that no case or controversy remains to be resolved, and that the federal courts whose competence depends on the existence of a controversy over the order have nothing further on which to operate. See *Association of Lithuanian Workers* v. *Brownell*, 355 U. S. 23 (designation under the Attorney General's "subversive list"); *United States* v. *Amarillo-Borger Express, Inc.*, 352 U. S. 1028 (I. C. C. order); *Atchison, Topeka*

[4] *E. g.*, *United States* v. *W. T. Grant Co.*, 345 U. S. 629; *Walling* v. *Helmerich & Payne*, 323 U. S. 37; *Mitchell* v. *C. W. Vollmer & Co., Inc.*, 349 U. S. 427; *Mitchell* v. *Joyce Agency, Inc.*, 348 U. S. 945.

& Santa Fe Ry. Co. v. *Dixie Carriers,* 355 U. S. 179 (same); *Garcia* v. *Landon,* 348 U. S. 866 (deportation order); *Jew Sing* v. *Barber,* 350 U. S. 898 (exclusion order); *Klig* v. *Rogers,* 355 U. S. 605 (deporation order); *Howard* v. *United States,* 340 U. S. 898 (expiration of grand jury in civil contempt case); *American Public Power Association* v. *Power Authority,* 355 U. S. 64 (superseding federal power legislation); *National Association for the Advancement of Colored People, Inc.* v. *Committee on Offenses,* 358 U. S. 40 (expiration of state legislative committee); *McKay* v. *Clackamas County,* 349 U. S. 909 (superseding legislation); *United States* v. *Alaska S. S. Co.,* 253 U. S. 113, 115–116 (superseding legislation); *Bracken* v. *Securities & Exchange Comm'n.,* 299 U. S. 504 (withdrawal of an administrative subpoena); *Montgomery Ward & Co.* v. *United States,* 326 U. S. 690 (return of seized property); *Commercial Cable Co.* v. *Burleson,* 250 U. S. 360 (same); *Cozart* v. *Wilson,* 353 U. S. 884 (release from official custody); cf. *United States ex rel. Norwegian Nitrogen Products Co.* v. *U. S. Tariff Commission,* 274 U. S. 106, 111–112.

4. The only possible basis upon which petitioner could still seek declaratory or injunctive relief is his desire for an adjudication that the prior action taken by the Government, which has since been superseded and expunged, was illegal. But wholly apart from the merits of this contention, this would amount to a request for a declaration that he had been wrongfully deprived of something which has recently been given to him. It is elementary that this Court will not declare abstract legal rights or wrongs and that a "case or con-

troversy" does not exist when a litigant "has obtained everything that [he] could recover in this case by a judgment of this court in [his] favor." *California* v. *San Pablo & Tulare R. R. Co.*, 149 U. S. 308, 314. And in *Brownlow* v. *Schwartz*, 261 U. S. 216, 217, the Court said:

> This Court will not proceed to a determination when its judgment would be wholly ineffectual for want of a subject matter on which it could operate. An affirmance would ostensibly require something to be done which had already taken place. A reversal would ostensibly avoid an event which had already passed beyond recall. One would be as vain as the other.

In the petition for certiorari, petitioner emphasized that the record in this case would provide material illumination and amplification of the "confrontation" issue already pending before the Court in the *Greene* case (Pet. 12–15). Even if this were true, it is no basis for this Court to decide the issue as to Taylor when a decree of this Court against the respondents could accomplish no more for him than has already been afforded by the respondents under the administrative determination. The value of a case as a precedent or its effect on similar issues raised in other cases does not alter the fact of mootness. In *California* v. *San Pablo & Tulare R. R. Co.*, *supra*, the Court declared (p. 314):

> The duty of this court, as of every judicial tribunal, is limited to determining rights of persons or of property which are actually controverted in the particular case before it.

> When, in determining such rights, it becomes necessary to give an opinion upon a question of law, that opinion may have weight as a precedent for future decisions. But the court is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it. * * *

5. In connection with the recent administrative action in this case, we take the opportunity to note that:—

(*a*) the *Greene* case is still pending and will present to the Court the general validity of the Industrial Security Program of the Defense Department;

(*b*) the Defense Department is currently undertaking a review of that Program in ways bearing directly on the problem presented by cases similar to petitioner's (see the Acting Secretary's memorandum for the Assistant Secretary of Defense, set forth in the Appendix, *infra*, pp. 18; this directive was issued the same day as the Acting Secretary issued his Finding and Order in petitioner's case); and

(*c*) several of the factors which petitioner stresses in his petition for certiorari as bearing on the problem of due process and judicial review likewise have a direct bearing on the administrative problem of whether petitioner should, as an administrative matter, be accorded a clearance; administrators continue to have their own obligations and responsibilities whether or not there is or can be judicial review or legal remedies in this field (and whatever the scope of judicial review if it is available).

CONCLUSION

Accordingly, we respectfully suggest that, in line with established practice and in the light of the suggestion made here, the judgment of the District Court be vacated and the case be remanded to that court with directions to dismiss the complaint on the ground that the case is now moot. See the cases cited *supra;* also, *e. g., United States* v. *Munsingwear,* 340 U. S. 36, 39–40; *Brotherhood of Locomotive Firemen and Enginemen* v. *United States,* 343 U. S. 971; *Los Angeles Building & Construction Trades Council* v. *Le Baron,* 342 U. S. 802; *Sawyer* v. *Dollar,* 344 U. S. 806; *Leader* v. *Apex Hosiery Co.,* 302 U. S. 656; *Harris* v. *Battle,* 348 U. S. 803; *Gunaca* v. *National Labor Relations Board,* 353 U. S. 902; *Ford* v. *United States,* 355 U. S. 38.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

JANUARY 1959.

APPENDIX

THE SECRETARY OF DEFENSE
Washington

DECEMBER 31, 1958.

FINDING AND ORDER

Subject: Bell Aircraft Application for Security Clearance for Charles Allen Taylor—Case No. OSD 56-196

After review of the subject application, and in consideration of all the facts and circumstances developed in this case, I hereby find that the requested clearance of Charles Allen Taylor is in the national interest and I so order, hereby superseding all previous orders in this case.

/s/ DONALD A. QUARLES, *Acting.*

OFFICE OF THE SECRETARY OF DEFENSE
Washington 25, D. C.

DECEMBER 31, 1958.

Mr. CHARLES ALLEN TAYLOR,
269 Wheatfield Road,
North Tonawanda, New York.

DEAR MR. TAYLOR: Pursuant to the provisions of Department of Defense Directive 5220.6, dated February 2, 1955, this Department has considered the matter of your personnel security clearance for access to Secret defense information at Bell Aircraft Corporation, Buffalo, New York.

By letters dated September 10, 1956, and June 14, 1957, you were informed, first, that your then existing security clearance should be suspended, and second, that after considering all the available information, it had been determined that the granting of clearance to you for access to classified defense information was not clearly consistent with the interests of national security.

Thereafter, by letter dated June 19, 1958, from the New York Industrial Personnel Security Hearing Board and by letter from this Office dated October 13, 1958, you were informed, first, that your case had been returned to the New York Hearing Board for further proceedings, and, second, that after considering all the available information, it had been determined that the granting of clearance to you for access to classified defense information was not clearly consistent with the interests of national security.

Subsequent to October 13, 1958, your case was subject to further consideration by this Department. It has now been determined by the Secretary of Defense that the granting of clearance to you for access to Secret defense information is in the national interest. This determination supersedes all previous determinations made in your case.

By separate letter this Office has informed your attorney, Mr. Joseph L. Rauh, Jr., of this decision.

Very truly yours,

A. Tyler Port,

A. TYLER PORT,

Director, Office of Industrial Personnel Security Review.

OFFICE OF THE SECRETARY OF DEFENSE

Washington 25, D. C.

DECEMBER 31, 1958.

JOSEPH L. RAUH, JR., ESQUIRE,
Rauh & Levy,
1631 K Street NW., Washington 6, D. C.

DEAR MR. RAUH: Reference is made to my letter to you dated October 13, 1958, in which I notified you of the determination of the New York Industrial Personnel Security Hearing Board following its further hearing in this case on July 11 and August 1, 1958.

This case has been the subject of review and further consideration in the Office of the Secretary of Defense. You are hereby advised that the Secretary of Defense, after considering all the available information, has determined that the granting of clearance to Mr. Charles Allen Taylor for access to Secret defense information is in the national interest.

This determination supersedes all previous determinations made in Mr. Taylor's case.

Very truly yours,

/s/ A. Tyler Port,
A. TYLER PORT,
Director, Office of Industrial Personnel Security Review.

OFFICE OF THE SECRETARY OF DEFENSE

Washington, D. C.

DECEMBER 31, 1958.

COMMANDER, AIR MATERIAL COMMAND,
Attn: MCID,
Wright-Patterson AFB, Ohio.

DEAR COMMANDER: Reference is made to the letters from this Office dated September 6, 1956, June 13, 1957, and October 13, 1958, concerning Mr. Charles Allen Taylor, a former employee of Bell Aircraft Corporation, Buffalo, New York, for whom a Secret clearance had been requested by that company.

The above-mentioned letters, respectively, informed you first, that any then existing security clearance of Mr. Taylor should be suspended; second, that after considering all the available information, it had been determined that the granting of clearance to Mr. Taylor for access to classified defense information was not clearly consistent with the interests of national security; and third, that the adverse determination had been set aside and further proceedings conducted, after which, after considering all the available information, it had been determined that the granting of clearance to Mr. Taylor for access to classified defense information was not clearly consistent with the interests of national security.

Subsequent to October 1958, Mr. Taylor's case was subject to further consideration by this Department. After considering all the available information, it has now been determined by the Secretary of Defense that the granting of clearance to Mr. Taylor for access to Secret defense information is in the national interest. This determination supersedes all previous determinations made in Mr. Taylor's case.

Evidence of record indicates that Mr. Taylor is no longer employed by the company that requested his clearance. Accordingly, no further action is required except appropriate annotation of your records.

Very truly yours,

/s/ A. Tyler Port,
A. Tyler Port,
Director, Office of Industrial Personnel Security Review.

Copy to:

1. USAF, Wash, DC, ATTN: AFUSI-6B
2. OpNav, SecBr, Wash, D. C.
3. ACofS, Intel, DA, Wash, DC
4. Central Index File

Office of the Secretary of Defense

Washington 25, D. C.

December 31, 1958.

Bell Aircraft Corporation,
Post Office Box # 1, Buffalo 5, New York.

Attention: Security Officer.

Gentlemen: Reference is made to the letters from this Office dated September 6, 1956, and June 13, 1957, concerning Mr. Charles Allen Taylor, a former employee for whom a Secret clearance had been requested by your company. By these letters you were informed, first, that any existing security clearance Mr. Taylor then had should be suspended, and second, that after considering all the available information, it had been determined that the granting of clearance to Charles Allen Taylor for access to classified defense information was not clearly consistent with the interests of national security.

Subsequent to June 1957, Mr. Taylor's case was subject to further consideration by this Department. After considering all the available information, it has now been determined that the granting of clearance to Mr. Taylor for access to Secret defense information is in the national interest. This determination supersedes the one previously announced.

Very truly yours,

/s/ A. Tyler Port,
A. TYLER PORT,
Director,
Office of Industrial Personnel Security Review.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
Washington 25, D. C.

6 JANUARY 1959.

JOSEPH L. RAUH, JR., ESQ.,
c/o Rauh & Levy, Esquires,
1631 K Street NW., Washington 6, D. C.

DEAR MR. RAUH: I write at the direction of the Secretary of Defense to reply to your telegram of January 5, 1959, addressed to the Secretary in connection with the matter of the industrial security clearance of your client, Charles Allen Taylor.

The language of the order of December 31, 1958, which reads "* * * hereby superseding all previous orders in this case" completely expunges all previous findings in this case, as if they had never been rendered.

The Secretary, by his "Finding and Order" of December 31, 1958, has found that the requested clearance of Charles Allen Taylor should be granted.

Very sincerely,

(Signed) ROBERT DECHERT.

THE SECRETARY OF DEFENSE

Washington

DECEMBER 31, 1958

MEMORANDUM FOR THE ASSISTANT SECRETARY OF DEFENSE (MP&R)

Subject: Amendment of Industrial Personnel Security Review Regulation, Department of Defense Directive 5220.6, dated February 2, 1955.

The Industrial Personnel Security Review Regulation, as presently written, has been interpreted and administered so as to preclude a Board functioning under the Regulation from differentiating between levels of clearance when making a determination to grant, deny, or revoke a clearance.

I am advised that during the past several months the Office of Industrial Personnel Security Review has been making a comprehensive study of the Review Regulation in terms of its possible improvement, and that one of the particular aspects covered in this study is the matter of providing for Board determinations which specify the level of clearance to be granted.

Recent developments have underlined the desirability of revising the Review Regulation in order to permit the Boards established by it to consider not only the derogatory information in a particular case, but also the level of classified information at which access is sought, and to make a determination which takes that factor into account.

I consider it appropriate, therefore, that the portion of the Office of Industrial Personnel Security Review

study which relates to this matter be separated from the remainder and brought to completion as soon as practicable in order that necessary action may be taken to amend Department of Defense Directive 5220.6 accordingly.

DONALD A. QUARLES, *Acting.*

U. S. GOVERNMENT PRINTING OFFICE: 1959

FILE COPY

No. 504

Office-Supreme Court, U.S.
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JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

CHARLES ALLEN TAYLOR,

Petitioner,

v.

NEIL McELROY, A. TYLER PORT,

Respondents

N WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PPOSITION TO GOVERNMENT'S SUGGESTION OF MOOTNESS

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 504

CHARLES ALLEN TAYLOR,

v. *Petitioner,*

NEIL McELROY, A. TYLER PORT,

Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

OPPOSITION TO GOVERNMENT'S SUGGESTION OF MOOTNESS

Far from accomplishing its objective of mooting petitioner's case by the eleventh hour clearance granted him, all that the Government has done by this last minute action is to give the Court a further demonstration of the arbitrary nature of a security program in which "clearance" can be based on nothing more than the proximity of this Court's process.

From September of 1956 when petitioner was first accused (R. 37) until October 13, 1958, when for the

second time the Defense Department found him guilty and denied him security clearance (R. 120), respondents relied upon the accusations of six secret informants who asserted and still assert that petitioner was once a Communist Party member. Under the pertinent Defense Department Regulation these informants were not made available for petitioner's examination at his security "hearings". After this Court granted certiorari to review the confrontation issue thus presented, respondents hastily granted petitioner a clearance—without, however, any exoneration from or recantation of the charges that petitioner was once a Communist Party member and has been untruthful in denying membership. Under these circumstances the Government's suggestion that petitioner's request for injunctive and declaratory relief is moot cannot be accepted; petitioner remains within the scope of the industrial security program, including its continuing "no-confrontation" provision, and is more than likely to be subjected to renewed proceedings upon the basis of the assertions of the six unrepudiated secret informants if this Court's process fades into the distance. As we shall show (see *infra*, pp. 10 to 19), under the repeated decisions of this Court, petitioner's continuing subjection to the challenged "hearing" procedures which have already caused him two and a half years of unemployment and security taint provides a clearly continuing case and controversy for this Court's adjudication. Indeed, far from rendering the case moot, the Government's latest action only provides additional ground for this Court's review by demonstrating the inevitably arbitrary result of basing security determinations on secret evidence which permits one conclusion today and exactly the opposite conclusion yesterday or tomorrow.

Thus petitioner is confident that the case is far from moot—we respectfully suggest, nevertheless, that the Court may want to follow what appears to be its practice in

similar cases and postpone the issue of mootness until it has had the benefit of the oral arguments. See, e.g., *Walling* v. *Helmerich & Payne*, 323 U.S. 37, 43; *Walling* v. *Reuter Co.*, 321 U.S. 671; *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U.S. 346; *Southern Pacific Terminal Co.* v. *I.C.C.*, 219 U.S. 498; *United States* v. *Trans-Missouri Freight Ass'n*, 166 U.S. 290. The record has been printed and petitioner's brief on the merits is due and will be filed prior to this Court's consideration of the suggestion of mootness. Because the question of mootness is intertwined with the facts on the merits and because oral presentations before this Court and interrogation of counsel may provide illumination upon the "likelihood of recurrence", which is the touchstone of continuing justiciability, postponement of the Court's determination of the mootness issue would be peculiarly appropiate here. Finally, the far-reaching double standard of mootness upon which the Government rests its contention (see *infra*, pp. 14 to 16) would require the overruling of decisions of this Court—a course which certainly should not be considered without benefit of full argument.

Under these circumstances we believe the Court will not want to consider the mootness issue at this time. For the Court's convenience, however, and in response to the Government's memorandum, we analyze herein the facts and authorities bearing upon the suggestion that no case or controversy remains for this Court's adjudication.

I

Statement of Facts

Petitioner was employed from 1941 until 1956 as a tool maker at Bell Aircraft Corporation, Buffalo, New York (R. 2, 29-30). On September 6, 1956, the Defense Department's Office of Industrial Personnel Security Review dis-

patched a letter to the company suspending all clearances for access to classified defense information then held by petitioner (R. 34). Petitioner was thereupon discharged from his employment (R. 30, 40). Shortly thereafter he received from the Office of Industrial Personnel Security Review a "Statement of Reasons" for the suspension of his clearance (R. 38), charging that "information before this Board indicates" that in 1942 and 1943 petitioner had been a member of, paid dues to, and held a membership card in, the Communist Party. Petitioner promptly entered a sworn denial of the charge (R. 42).

On November 1, 1956, petitioner appeared at a "hearing" before the Defense Department's New York Industrial Personnel Security Hearing Board to defend himself against the charge of Communist Party affiliation some 13 or 14 years earlier. At the outset of the hearing, the Government made clear that, in accordance with the pertinent Defense Department Regulation,[1] it would produce no evidence in support of its charge of Communist affiliation or even inform petitioner of the names of his accusers (R. 18, 126-130). Petitioner, nevertheless, assuming the burden of proving his innocence, testified under oath that he had never been a member of, paid dues to, held a card in, or aided or abetted, the Communist Party in any manner (R. 353-413). He not only gave categorical sworn denials to the charge of Communism and each facet thereof, but he demonstrated his public opposition to the Communist Party program and Communist Party leaders in his local union both during the

[1] "No classified information, nor any information which might compromise investigative sources or methods or the identity of confidential informants, will be disclosed to any contractor or contractor employee, or to his lawyer or representatives, or to any other person not authorized to have access to such information." Industrial Personnel Security Review Regulation, 20 Fed. Reg. 1553, 32 CFR, Part 67 (Supp. 1958) Section 67.1-4. This regulation, challenged by petitioner's suit, remains unchanged today.

years in question and continuously thereafter (*ibid.*). Lengthy cross-examination by the Board and its counsel served only to reinforce petitioner's testimony (R. 369-406; 409-413). Eleven witnesses took the stand to demonstrate under oath that the charges against petitioner were patently implausible and wholly false. See Pet., pp. 5-6.

After three days of "hearing", the record contained only the testimony of twelve witnesses on direct and cross-examination disproving beyond peradventure of doubt each and every charge against petitioner. Nevertheless, on June 14, 1957, the Defense Department's Director of the Office of Industrial Personnel Security Review wrote petitioner that an adverse determination had been reached and that, "in reaching this determination", the charges of Communist Party membership, dues payment, and affiliation, were all found "*true as stated*" (R. 52). On the basis of this finding, security clearance was finally denied petitioner as "not clearly consistent with the interests of national security" (*ibid.*).

On April 24, 1958, five months having elapsed without action by the Defense Department on petitioner's direct appeal to the Secretary, petitioner filed this suit for injunctive and declaratory relief in the United States District Court for the District of Columbia seeking a review of the denial of his clearance without confrontation by his accusers (R. 1). On May 30, 1958, more than six months after petitioner's appeal to the Secretary of Defense and more than six weeks after the institution of this action, petitioner was advised by letter from the General Counsel at the direction of the Secretary of Defense that the case was being returned to the Hearing Board for further proceedings. In so doing, however, the Defense Department stated that the former adverse determination against petitioner, based on the statements of the secret informants, "*was neither arbitrary*

nor capricious but was, on the contrary, reasonably supported" (R. 59-60).

On June 19, 1958, the Hearing Board transmitted to petitioner an Amended Statement of Reasons (R. 68), containing charges substantially identical with the former charges. The only real difference was that, instead of the former allegation that "information before this Board indicates" that petitioner "*may still have* membership in the Communist Party" (R. 38), it was now alleged that the information before the Board indicated that petitioner had been *expelled* from the Communist Party in 1943 (R. 68). In addition, in a civil administrative "indictment" for perjury, petitioner was charged with false testimony at his 1956 hearing in denying former Communist Party affiliation (see Appendix A, p. 31, *infra*). Petitioner immediately denied the amended charges under oath (R. 80). A hearing was scheduled for July 11, 1958, and petitioner appeared with counsel ready to face his accusers only to be told by the Board that no decision had yet been reached on whether to confront him with his accusers (R. 89). The hearing was continued (R. 94). On August 1 the hearing was reconvened and this time the Government flatly announced that it was not going to confront petitioner with his accusers (Pet. p. 8). Instead the Board's Chairman read into the record an anonymous synopsis of accusations by six informants that petitioner had been affiliated with the Communist Party in 1942-43 (R. 102-104). It was quite clear from this synopsis and other indications in the record that the Board itself was forced to rely solely on second-, third- and fourth-degree hearsay assertions against petitioner by persons the Board never examined and that petitioner's accusers are not federal agents secreted in the Communist Party but merely casual informants engaged in private slander (see Pet., pp. 7-8, 14).

On September 12, 1958, petitioner filed in the District Court a Motion for Summary Judgment to which respondents cross-moved. A few minutes before the October 14th argument in the District Court on these motions, counsel was informed that petitioner had once again, on October 13, 1958, been finally denied security clearance. On that date the Defense Department for the second time made a final administrative determination finding petitioner a security risk and denying him access to secret information (R. 120-124). The Department found the charges "*true as stated*" and particularly found that petitioner had "deliberately and knowingly" made "false or misleading" denials of past Communist affiliation (R. 122-123; see Appendix A, *infra*, p. 31). As a result of this latest administrative action on October 13th, the Government on the following day formally withdrew in District Court its prior contention that petitioner had failed to exhaust his administrative remedies (R. 459). The District Court, although "concerned about the administrative proceedings" (R. 473-474), entered summary judgment for the Government (R. 475).

On November 8, 1958 the petition for certiorari was filed. On December 8, 1958, less than two months after petitioner, on the basis of information from secret informants, had been finally determined to be a security risk and to have committed perjury in denying Communist Party affiliation, the Solicitor General informed this Court that the case was the subject of review "by the Departments of Defense and Justice."[2] On December 15, 1958, this Court granted cer-

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[2] The Government states in its Memorandum on Mootness that "the present case has been the subject of continuing administrative review by the Departments of Defense and Justice" (p. 5). We are certain that the Government does not mean to imply to this Court that the case was under "administrative review" between the time of the second final denial of clearance on October 13, 1958 and the Solicitor General's entry into the case after the the petition for certiorari was filed on November 8,

tiorari and assigned the case for argument immediately preceding *Greene* v. *McElroy*, No. 180. On December 31, 1958 the Acting Secretary of Defense found that the "clearance of Charles Allen Taylor is in the ***national interest.***" As unusual as was this sudden and belated about-face, even more unprecedented was the failure of the Secretary to make the prescribed determination that petitioner's clearance was "clearly consistent with the interests of the *national security*" (Industrial Personnel Security Review Regulation, Section 20e) and to issue findings on each of the charges against petitioner, notwithstanding the fact that the Department's own Regulations require that all security determinations "shall include a finding with respect to each of the allegations set forth in the Statement of Reasons" (Industrial Personnel Security Review Regulation, Section 20d).

On January 5, 1959, petitioner's attorney sent a telegram to the Secretary of Defense (see *infra*, Appendix B, p. 33) requesting the issuance of the required findings and specificaliy asking for findings (1) reversing all the earlier findings, (2) withdrawing the false charges, (3) announcing that Mr. Taylor had never been a member of the Communist Party, never paid Communist Party dues, never attended Communist Party meetings, etc., and (4) establishing that he has been truthful in so asserting. The only response to this telgram was a letter of January 6, 1959 from the Department's General Counsel rejecting *sub silentio* petitioner's request for affirmative findings and merely stating that "The language of the order of December 31, 1958 ,which reads '. . . hereby superseding all previous orders in this case' completely expunges all previous

1958. As a matter of fact, the Government itself concedes that "a final administrative determination having the effect of . . . denying 'secret' clearance to petitioner was made on October 13, 1958" (Government Memorandum on Mootness, p. 4).

findings in this case, as if they had never been rendered" (see *infra*, Appendix B, p. 34). Thereupon, on January 10, 1959, petitioner's attorney addressed another telegram (see *infra*, Appendix B, p. 34) to the Secretary of Defense referring to the "unresponsive" nature of the January 6th reply and again requesting the issuance of exculpatory findings that petitioner had never been a Communist Party member and that his denial of such membership had not been perjurious. No response has been received.

Petitioner is now employed by Bell Aircraft under the cloud of two and a half years of grave charges and without the benefit of findings clearing him of those charges or repudiating the assertions of the six secret informants. Indeed, petitioner has already once more been required to fill out personnel security questionnaires, including questionnaires concerning past Communist affiliation, which are the first steps in the standard security clearance procedure to which petitioner is now apparently once more being subjected.

* * *

Notwithstanding:

(i) that the Defense Department refuses to admit any error in its two and a half years of denial of petitioner's clearance without confrontation; steadfastly maintains the validity of the "no-confrontation" provision of its Regulations; refuses to repudiate the accusations by the six secret informants which it can use against petitioner again at any time under its no-confrontation Regulation, and

(ii) that the Justice Department concedes (p. 7) that the "injurious conduct" which petitioner seeks to restrain and have declared unlawful "*may* or may not *recur* . . .",

the Government now has the temerity to suggest that its belated action has deprived this Court of its power of determination. But "clearance" without the adjudication petitioner seeks concerning the contested "hearing" procedures is of little value to petitioner who is faced with the strong likelihood of renewed loss of clearance under the same procedures which have already caused him two and a half years of heartache and penury. As we will show (*infra*, Point II), it is the firm and repeated holding of this Court that suits for declaratory and injunctive relief are not mooted by discontinuance of defendant's challenged conduct where there is a reasonable possibility of its recurrence. And, as we shall also demonstrate (*infra*, Point III), there is a very substantial likelihood that petitioner will once again be subjected to loss of security clearance and employment under the unfair and arbitrary "hearing" procedures he challenges, unless a judicial declaration of their invalidity is forthcoming. The applicable decisions of this Court and the facts of petitioner's case demonstrate that there continues to be a very real case and controversy before the Court and that all policy considerations militate in favor of its resolution.

II

Suits for Declaratory and Injunctive Relief Are Not Mooted by Discontinuance of the Challenged Conduct Where There Is a Reasonable Possibility of Its Recurrence

Time and again this Court has rejected the contention that suits for injunctive and declaratory relief are abated merely by the discontinuance of the challenged activity. Since equity actions are preventive rather than compensatory (see *Swift & Co.* v. *United States*, 276 U.S. 311, 326), this Court has uniformly held that discontinuance of the challenged conduct upon which such suits are initially

predicated, does not deprive the Court of power to adjudicate the controversy and issue a decree preventing recurrence. See cases collected in Diamond, *Federal Jurisdiction to Decide Moot Cases*, 94 U. Pa. L. Rev. 125; Note, *Cases Moot on Appeal*, 103 U. Pa L. Rev. 772.

As long as there is possibility of recurrence, cessation of challenged activity does not deprive federal courts of constitutional authority to grant relief against renewed violations. This rule applies equally where private persons have discontinued activity against which the Government seeks relief (*United States* v. *Trans-Missouri Freight Ass'n*, 166 U.S. 290; *Walling* v. *Helmerich & Payne*, 323 U.S. 37; *United States* v. *W. T. Grant Co.*, 345 U.S. 629), and where the Government has discontinued activity against which private persons seek relief (see *Southern Pacific Terminal Co.* v. *ICC*, 219 U.S. 498, 514-16; *McGrain* v. *Daugherty*, 273 U.S. 135, 180-182; *Panama Refining Co.* v. *Ryan*, 293 U.S. 388, 413-14).[3] A clear exposition of the pertinent authorities appears in the Government's Brief in the case of *United States* v. *W. T. Grant Co.*, 345 U.S. 629, the most recent judicial reaffirmation of the applicable rule on mootness, where the Government pointed out (pp. 11-13):

> "'Voluntary discontinuance of an alleged illegal activity does not operate to remove a case from the ambit of judicial power.' *Walling* v. *Helmerich & Payne*, 323 U.S. 37, 43. As the Court further said in that case (*ibid.*), where the defendant 'has consistently urged the validity' of the conduct which he has discontinued and would be free to resume it if no judicial restraint were imposed, there is 'an actual controversy, and adverse interests' (*Lord* v. *Veazie*, 8 How. 251,

[3] This broad principle applies equally in litigation between private parties. See *Goshen Mfg. Co.* v. *Myers Mfg. Co.*, 242 U. S. 202.

255), with a 'subject-matter on which the judgment of the court can operate' . . .

. " . . . mere abandonment of the challenged practices—particularly after suit to enjoin them has been filed—does not put an end to the controversy. *United States* v. *Trans-Missouri Freight Ass'n*, 166 U.S. 290, 307-310; *Federal Trade Commission* v. *Goodyear Tire & Rubber Co.*, 304 U.S. 257, 260; *Walling* v. *Helmerich & Payne*, 323 U.S. 37, 42-43. *Cf. National Labor Relations Board* v. *Mexia Textile Mills*, 339 U.S. 563, 567-568. An action to enjoin an order of the Interstate Commerce Commission has been held not moot even though the order had expired, where the order 'was capable of repetition by the commission and was a matter of public interest.' *McGrain* v. *Daugherty*, 273 U.S. 135, 182; *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U.S. 498, 514-516; *Southern Pacific Co.* v. *Interstate Commerce Commission*, 219 U.S. 433, 452 . . . As long as the 'issue as to whether future violations should be enjoined' is still before the court, the case is not moot."

This analysis by the Government was fully approved in this Court's decision in the *Grant* case, which explicitly reaffirmed the traditional rule that

". . . cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i.e., does not make the case moot. *United States* v. *Trans-Missouri Freight Ass'n*, 166 U.S. 290; *Walling* v. *Helmerich & Payne, Inc.*, 323 U.S. 37; *Hecht Co.* v. *Bowles*, 321 U.S. 321. A controversy may remain to be settled in such circumstances, *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 448, e.g., a dispute over the legality of the challenged practices.

Walling v. *Helmerich & Payne, Inc.*, *supra*; *Carpenters Union* v. *Labor Board*, 341 U.S. 707, 715. The defendant is free to return to his old ways. This, together with a public interest in having the legality of the practices settled, militates against a mootness conclusion. *United States* v. *Trans-Missouri Freight Ass'n* . . ." (345 U.S. at p. 632).

To the no-case-or-controversy contention, one presently being urged by the Government, the decision gave the long-accepted response that:

"Along with its power to hear the case, the court's power to grant injunctive relief survives discontinuance of the illegal conduct. *Hecht Co.* v. *Bowles*, *supra*; *Goshen Mfg. Co.* v. *Myers Mfg. Co.*, 242 U.S. 202. The purpose of an injunction is to prevent future violations, *Swift & Co.* v. *United States*, 276 U.S. 311, 326, and of course, it can be utilized even without a showing of past wrongs" (at p. 633).

The Court emphasized that discontinuance of challenged conduct, even when accompanied by a profession of its permanent abandonment "does not suffice to make a case moot", although "it is one of the factors to be considered in determining the *appropriateness* of granting an injunction against the now-discontinued acts" (emphasis supplied). Cf. *Walling* v. *Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419, 421.

It is too late in the day to question this Court's authority to adjudicate a suit for declaratory or injunctive relief where the conduct upon which the action is predicated has been discontinued while the case is *sub judice*, under circumstances giving no assurance against its repetition. In such cases this Court has expressly upheld and exercised its jurisdiction on numerous occasions ever since its deci-

sion in *United States* v. *Trans-Missouri Freight Ass'n*, 166 U.S. 290.[4]

Nor is it of any avail for the Government to suggest, as it does in its Memorandum (p. 7), that, because the suit is *against* the Government, the "situation is not at all the same as if a private defendant had voluntarily ceased some challenged conduct alleged to be unlawful." This suggestion of a "double standard" of mootness was long ago expressly rejected by the Court in *Southern Pacific Terminal Co.* v. *ICC*, 219 U.S. 498. In its Brief in the *Southern Pacific* case (at p. 20), the Government had referred to the *Trans-Missouri* decision, where this Court first applied the continuing jurisdiction principle, and suggested that "in the *Trans-Missouri* case the public interest was concerned in having the case heard which the railroads contended was moot, while in the case at bar the contrary situation exists . . ." But this Court's opinion (219 U.S. at 516) rejected any distinction between cases where private individuals have discontinued conduct the Government seeks to enjoin (*Trans-Missouri*) and those in which the Government has discontinued conduct private individuals seek to have declared unlawful (*Southern Pacific*), holding that the circumstance "*that the Government is the respondent, not complainant, does not*

[4] See, e.g., *Southern Pacific Co.* v. *ICC*, 219 U.S. 433, 452; *Southern Pacific Terminal Co.* v. *ICC*, 219 U.S. 498, 514-16; *Goshen Mfg. Co.* v. *Myers Mfg. Co.*, 242 U.S. 202; *McGrain* v. *Daugherty*, 273 U.S. 135, 180-182; *Leonard* v. *Earle*, 279 U.S. 392; *Panama Refining Co.* v. *Ryan*, 293 U.S. 388, 413-14; *NLRB* v. *Pennsylvania Greyhound Lines*, 303 U.S. 261; *FTC* v. *Goodyear Co.*, 304 U.S. 257; *United States* v. *Rock Royal Co-op., Inc.*, 307 U.S. 533, 555-6; *Walling* v. *Reuter Co.*, 321 U.S. 671; *Walling* v. *Helmerich & Payne*, 323 U.S. 37; *Porter* v. *Lee*, 328 U.S. 246, 251-52; *Ford Motor Co.* v. *United States*, 335 U.S. 303, 313; *NLRB* v. *Crompton-Highland Mills*, 337 U.S. 217, 225; *NLRB* v. *Mexia Textile Mills*, 339 U.S. 563, 567-8; *Henderson* v. *United States*, 339 U.S. 816, 823; *United States* v. *W. T. Grant Co.*, 345 U.S. 629; *Carpenters Union* v. *Labor Board*, 357 U.S. 93, 97, n. 2.

lessen or change" the Court's constitutional authority to adjudicate a suit involving a recurring public controversy.[5] Subsequent decisions of this Court have adhered to the *Southern Pacific* ruling, upholding its authority to adjudicate suits for prospective relief against governmental conduct which has been discontinued but is subject to renewal. See, e.g., *Panama Refining Co.*, v. *Ryan*, 293 U.S. 388, 413-14; *Leonard* v. *Earle*, 279 U.S. 392; *McGrain* v. *Daugherty*, 273 U.S. 135, 180-182; *cf. United States* v. *Rock Royal Co-op., Inc.*, 307 U.S. 533, 555-6; *FTC* v. *Goodyear Co.*, 304 U.S. 257, 260; *Fiswick* v. *United States*, 329 U.S. 211, 221-22; *Henderson* v. *United States*, 339 U.S. 816, 823.

The "case or controversy" clause of the Constitution does not discriminate against private actions; no reason is urged or appears why this Court should overrule *Southern Pacific* and later cases to create a double standard of mootness. On the contrary, if any double standard were appropriate in this area, it is the individual who should be favored. The Government is, after all, amply protected against recurring private violations of law even without injunctive relief—not only by the vast financial and personnel resources it can marshal against renewed violations, but also by a substantial arsenal of statutory power to obtain expeditious restraint against violators. The individual, on the other hand, has no such extra-judicial resources, financial or statutory, against recurrent violation of his rights by the Government. Petitioner's own record is illustrative—two and a half years of degradation and unemployment, coupled with vast legal efforts culminating in this Court, were required before petitioner was able to

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[5] The Court later reaffirmed the fact that there were only *"immaterial differences"* between *Southern Pacific* and *Trans-Missouri*, and pointed out that "in terms the ruling in the *Southern Pacific Case* was based upon the decision in the *Trans-Missouri Case.*" *United States* v. *Hamburg-Amerikanische Co.*, 239 U.S. 466, 477.

achieve any redress whatever. We find difficulty in understanding the basis for the Government's suggestion of a double standard of mootness which would deny relief to the largely defenseless individual, while affording it to the all-powerful Government.

In any event we do not believe this Court will seriously consider overruling *Southern Pacific* and adopting the double standard there rejected when the Government cites neither policy nor precedent for such a sharp break with established law. Thus, although the Government cites twenty-six cases for its mootness contention, not a single one affects the pending issue. Twenty of the cases were decided by this Court without opinion and in most of these the suggestion of mootness was either unopposed or urged by all parties. Of the six remaining cases, in which the grounds of decision were announced, five do not bear upon the *Trans-Missouri—Southern Pacific* rule on which petitioner relies [6] and the sixth is in no sense inconsistent with it.[7]

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[6] *California* v. *San Pablo & Tulare R.R. Co.*, 149 U.S. 308, was a suit by the state to recover assessed taxes which was mooted by their payment. *United States* v. *Alaska S.S. Co.*, 253 U.S. 113, was a suit to annul an ICC order prescribing two forms of bills of lading which was mooted by passage of the Transportation Act of 1920 requiring different forms of bills of lading from those challenged in the suit. *Brownlow* v. *Schwartz*, 261 U.S. 216, was an action to compel issuance of a building permit which was mooted by issuance of the permit, construction of the building and termination of plaintiff's financial interest therein. *U.S. ex rel. Norwegian Nitrogen Products Co.* v. *U.S. Tariff Commission*, 274 U.S. 106, was a suit by a foreign importer to compel revelation of information at a discretionary hearing before the Tariff Commission which was mooted by completion of the Commission's discretionary function and Presidential issuance of the revised tariff. *United States* v. *Munsingwear*, 340 U.S. 36, was not a decision on the issue of mootness at all, but simply involved the res judicata effect of an earlier lower court determination of mootness.

[7] *Commercial Cable Co.* v. *Burleson*, 250 U.S. 360. There, pursuant to Joint Resolution of Congress passed on July 16, 1918, "*during the continuance of the present war*" the President was authorized to take possession of marine cable systems. Plaintiffs were owners of a cable

Having neither policy nor precedent with which to withstand the established rule, the Government simply seeks to evade it by urging that the granting of security clearance gave petitioner all he might have sought in this litigation and all that the courts could afford him. Thus the Government's Memorandum (p. 6) states:

> "The ultimate relief which might be sought in this litigation (but was not in fact sought), *i.e.*, a determination of eligibility for access to classified defense information, has been afforded petitioner by the new administrative order. No further relief from the respondents is available, or can be granted to petitioner in this proceeding."

The Government is wrong on several counts: a "determination of eligibility for access to classified defense information"—that is, clearance—is not the relief sought (which the Government concedes), is not "the ultimate relief which might be sought", is not all the relief "available" to and required by petitioner and is not all the relief which "can be granted to petitioner in this proceeding."

(i) Actually, petitioner has not yet obtained the relief to which he addressed the very first prayer of his complaint—a declaratory judgment that

> "plaintiff is entitled to a full and fair hearing before defendants or their agents upon the charges

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system seized pursuant to Presidential Proclamation of November 2, 1918. While the case was pending before this Court the plaintiffs' property was returned to them by Presidential order. Under these circumstances plaintiffs' fanciful contention that the lines "may again be wrongfully taken" was necessarily dismissed by this Court. At the time of this Court's mootness decision (June 9, 1919), the Armistice had been in effect since November 11, 1918, and even the Peace Conference had been concluded. These events certainly left no room for the possibility that the President would once more seize the lines "during the continuance of" the war. The case is thus entirely consistent with the *Trans-Missouri—Southern Pacific* doctrine.

against him, at which hearing he is given opportunity to be confronted with the witnesses and the evidence upon which the charges are based."

Of course petitioner might *also* have sought what the Solicitor General concedes that he did not seek—a judicial restoration of his security clearance—in addition to injunctive and declaratory relief against the Department's unfair hearing procedures. But however that may be, it is an undeniable fact that petitioner has not yet been afforded his requested adjudication that the no-confrontation requirement of the Defense Department's Industrial Security Hearing Regulations is constitutionally and statutorily defective. *That Regulation continues in effect without alteration,* and as we demonstrate hereafter (see *infra*, pp. 19 to 28), there is the strongest likelihood that petitioner will again suffer thereunder unless he obtains his requested relief.

(ii) The hasty last minute "clearance" is not all the relief "available" to and required by petitioner. Far from it, petitioner will never be safe while the Defense Department refuses to find that the statements of the six secret informants are false and insists that it has a right to retry petitioner at any time without benefit of confrontation. In view of the likelihood of recurrence (see pp. 19-28, *infra*), we respectfully suggest that the "relief" which the Government has given petitioner—clearance good for this day and this day only—is far from the "available" and needed protection of a judicial declaration invalidating the "no-confrontation" hearing procedures.

(iii) The Government's belated clearance is not all the relief which this Court can afford him. An injunctive or declaratory decree that petitioner is entitled to a fair hearing will make impossible a repetition of two and a half years

of security taint and unemployment. As we have already demonstrated, nothing in the "case or controversy" limitation upon this Court's jurisdiction grants the Government a weapon with which to disarm this Court so that it becomes incapable of protecting litigants and vindicating their rights against recurrent oppression.[8]

It is thus clear that, where as here there is a likelihood that petitioner will once again be subjected to the unfair hearing procedures prescribed by the Department's no-confrontation Regulation, this Court's jurisdiction is not defeated by the Government's last minute attempt to prevent its exercise. We turn now to demonstrate the real likelihood that, unless judicially restrained, respondents will once again deprive petitioner of that right to a fair hearing which he asks this Court to declare and vindicate.

III

There Is Substantial Likelihood That Petitioner Will Once Again Be Subjected to Loss of Security Clearance Under the Unfair and Arbitrary Hearing Procedures Which His Suit Challenges

This Court has stated in different ways what degree of probability of recurrence is required in order to invoke

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[8] The Government also suggests (p. 7) that petitioner's "suit attacks, not merely some injurious conduct which may or may not recur, but a particular official administrative order" which has now been replaced by a different order. Of course petitioner's suit involved "a particular official administrative order"; much, if not most, action to restrain governmental conduct is instituted to affect a particular order then outstanding. But it is the very essence of the *Southern Pacific* doctrine that the expiration or withdrawal of a particular governmental order does not moot a case when there is a likelihood of the issuance of a new order adversely affecting the rights of the litigants. See cases cited *supra*, p. 15. Petitioner's complaint was predicated upon the Defense Department's proceedings culminating in an adverse order reflecting a course of injurious conduct which even the Government admits "may recur" unless judicially restrained.

equity jurisdiction when challenged conduct has been discontinued. It has held adjudication on the merits appropriate where the discontinued conduct is "*capable of repetition*" by defendant (*Southern Pacific Terminal Co.* v. *ICC.*, 219 U.S. 498, 514-16; *McGrain* v. *Daugherty*, 273 U.S. 135, 182), where defendant is "*free to resume*" his conduct (*Walling* v. *Helmerich & Payne*, 323 U.S. 37), or where circumstances "*permit the recurrence*" (*Henderson* v. *United States*, 339 U.S. 816, 823); and it has recently approved Judge Hand's formulation requiring *defendant to demonstrate that "there is no reasonable expectation that the wrong will be repeated"* (*United States* v. *W. T. Grant Co.*, 345 U.S. 629, 633). If these be the controlling criteria, no more need be said; clearly, respondents are "free to resume" their proceedings against petitioner and, far from attempting a demonstration to the contrary, the Government concedes that the injurious conduct *may recur* (p. 7).

Even assuming, however, that the standard were stricter than a mere "capability" of resumption and were to require a showing of its "likelihood",[9] petitioner's case eminently meets established standards for finding such a likelihood of renewal. Thus, in determining whether there is sufficient probability of renewal to avoid a contention of mootness, this Court has particularly emphasized two criteria:

First, whether the discontinued activity reflects an isolated instance or a continuing course of conduct, and,

Second, whether discontinuance occurs at a time and in a manner reflecting confession of error and renunciation of

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[9] "The fundamental issue is whether the acts sought to be enjoined have been completely abandoned, or whether there is a likelihood of their renewal." Diamond, *Federal Jurisdiction to Decide Moot Cases*, 94 U. Pa. L. Rev. 125, 137.

the challenged practice or merely at a time and in a manner calculated to prevent impending judicial redress against a practice whose propriety defendant continues to assert.

Although either of these tests, if met, is sufficient to sustain a finding of "likelihood of renewal", we shall show that, as a matter of fact, petitioner's case clearly meets both of these guiding criteria.

A. *Petitioner Remains Subject to Renewed Loss of Clearance Without Confrontation in the Defense Department's Continuing Clearance Program*

In measuring the likelihood of renewal a primary test applied by this Court is whether the discontinued activity upon which the request for injunctive relief is predicated represents an isolated act or merely one in a continuing series (see *Southern Pacific Terminal Co.* v. *ICC*, 219 U.S. 498, 514-16; *Leonard* v. *Earle*, 279 U.S. 392; *McGrain* v. *Daugherty*, 273 U.S. 135; 94 U. Pa. L. Rev. at 135-137 and cases cited). Petitioner, a highly skilled tool maker, is clearly subject to a continuing series of security screenings and proceedings as long as he continues to practice his "sensitive" skill at Bell Aircraft or elsewhere.

Security screening, whether of Government employees or of industrial workers, is in its very nature a continuing process. All of the Government's loyalty and security programs have been based upon the proposition that the "internal security of the Government demands continuous screening, scrutiny and surveillance of present and prospective employees."[10] Pursuant to this policy the Defense

[10] See Report of the President's Temporary Commission on Employee Loyalty, March 22, 1947; Appendix, p. 1331, 1338, Hearings Before a Subcommittee of the Committee on Post Office and Civil Service, United States Senate, 84th Cong., 1st and 2d Sessions, on "Administration of the Federal Employees' Security Program."

Department Regulations, like the other Government security programs, permit, and in practice result in, continuous screening and regular reopening of security clearances.[11]

Thus, no finality attaches to the granting of a security clearance under the Defense Department's "continuous surveillance" program. But, in measuring the likelihood of a renewal we do not rely merely upon the continuing nature of security surveillance as a matter of law and governmental policy, but also upon the consideration that as a matter of fact those whom the Government once finds suspect are subject to an unending series of security charges, rehearings and redeterminations. In the words of the Chairman of the American Federation of Scientists testifying before a Senate Committee:

> "Multiple jeopardy has occurred many times in security cases. At Fort Monmouth virtually all of the 20 or 30 individuals charged or suspended had been cleared several times previously, and most of them were reinstated after full hearings. At present a man must be cleared again whenever shifting to a new agency, or to a new geographical division of the same agency. Some individuals have been cleared 20 times. This is hard on morale, a source of worry to the individual, causes delays and inefficiency and is unnecessarily expensive.
>
> "I could speak of my own experience, of having to have an additional two clearances, including making out the PSQ's all over again when I was to do some work on the west coast of this country for the Atomic Energy

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[11] Armed Forces Industrial Security Regulation, dated September 21, 1956, Section 6-110; Section 2-202b, c; Section 2-209b; Industrial Personnel Security Review Regulation, Section 21, 22, 24(c).

> Commission, although I had already been cleared on the east coast; there was a new security investigation." [12]

A recent study by Professor Ralph Brown of Yale Law School provides a table of "Previous Loyalty-Security Proceedings" in a sample of 337 cases.[13] The data shows that of these 337 cases almost half the employees were subject to multiple proceedings. This absence of finality in clearance has led to reform recommendations by a Committee of the New York City Bar Association. In its 1956 study of the general subject, "The Federal Loyalty-Security Program," the Committee states (at p. 184):

> "Successive security determinations concerning a particular individual are now frequent. They are an unsettling factor in the security programs. Employees subject to repetition of clearance are placed under an annoying burden. The impact is unfortunate upon the government also, for employees are discouraged from taking or continuing in jobs subject to the security system when they are faced with repeated security proceedings."

And if there were any remaining doubt concerning the continuous subjection of employees, especially those once suspect, to proceedings under the Government security programs, this Court need look no further than the record in cases recently before the Court itself:

In *Peters* v. *Hobby*, 349 U.S. 331 (see Brief for Peters, pp. 3-5), the employee was subjected to three separate

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[12] Hearings before a subcommittee of the Committee on Government Operations, 84th Cong., 1st Sess., on S.J. Res. 21, p. 411. And see testimony of John Phelps, Secretary, Scientists Committee on Loyalty and Security, Federation of American Scientists, Hearings, *supra*, n. 9, at p. 906.

[13] *Brown, Loyalty and Security* (1958, Yale University Press), Appendix B, p. 491.

clearance proceedings. In January 1949 Dr. Peters received and filled out a loyalty interrogatory. Shortly thereafter he was informed that the Public Health Service loyalty board had found no evidence of any disloyalty. Two years later, in December 1951, he was informed that his loyalty was being reexamined. Following charges and a formal hearing, the Board again determined, in May of 1952, that there was no doubt as to Dr. Peters' loyalty. One year later his case was reexamined on its own motion by the Civil Service Commission and after various proceedings it was determined that there was a doubt as to Dr. Peters' loyalty and he was dismissed.

Service v. *Dulles*, 354 U.S. 363, is equally illustrative (see Brief for Service, pp. 4-7). In 1945, following an incident which led the State Department to question Mr. Service's loyalty, he was suspended but subsequently reinstated in his job in August of 1945. His case was reviewed a number of times by the State Department which cleared him in 1946, 1947 and 1949. Nevertheless, in 1950 he was charged and a hearing was held before the Department of State Loyalty-Security Board which found him to be loyal. In July of 1951, on a reconsideration, that Board reaffirmed its 1950 finding. In the fall of 1951 new hearings were ordered, resulting in an adverse determination and, subsequently, in his dismissal from the Foreign Service.

Greene v. *McElroy*, No. 180,, presently pending, is also enlightening. Prior to 1951 Mr. Greene has been cleared for "top secret." In that year his clearance was suspended, charges were issued and hearings held, resulting in the final restoration of his clearance. Nevertheless in April of 1953 the Secretary of Navy on his own motion and without prior warnings or proceedings revoked Mr. Greene's clearance as "not clearly consistent with the interests of national se-

curity." That result was reaffirmed after a new set of hearings.[14]

Thus this Court need not go beyond the cases recently before it to find how continuously and endlessly those once suspect are subjected to security proceedings. But what makes petitioner's renewed subjection to the unfair hearing procedures prescribed by the Defense Department even more probable is the fact that, far from renouncing the accusations of the six secret informants against petitioner upon which it has relied for two and a half years, the Government has refused to make findings repudiating these secret informants. The Defense Department continues to affirm not only the legality of its Regulation under which confrontation has twice arbitrarily been denied petitioner and will again be denied him in new proceedings, but the Department still refuses to accept petitioner's sworn affirmation that he was never affiliated with the Communist Party. We turn now to this demonstration.

B. *The Government's Last Moment Attempt to Avoid an Adjudication Reflects No Abandonment Either of Its Accusations Against Petitioner or the Unfair Hearing Procedures Presently in Issue.*

An important element in this Court's determination whether challenged conduct is sufficiently likely to be renewed to warrant the granting of injunctive or declaratory relief is whether the abandonment is accompanied by a confession of the error and wrongfulness of the challenged

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[14] One of the landmark cases in the Defense Department's Industrial Security Program is that of Edward U. Condon. As director of research at Corning Glass, Dr. Condon was required to have security clearance. Having successfully survived numerous successive clearance proceedings between 1940 and 1954, Dr. Condon was nevertheless denied clearance by the Secretary of the Navy in October, 1954, whereupon he resigned his position rather than face a lifetime of continuing security proceedings. See New York Times, December 14, 1954, pp. 1, 20.

conduct or reflects merely a desire by defendants to avoid a binding adjudication which would preclude repetition of their unlawful activity. See *Goshen Mfg. Co.* v. *Myers Mfg. Co.*, 242 U.S. 202; *Walling* v. *Reuter Co.*, 321 U.S. 671; *Walling* v. *Helmerich & Payne*, 323 U.S. 37; 94 U. Pa. L. Rev. at 140 and cases cited. We doubt that even the Government will suggest that its last-minute action reflects anything except the latter consideration.

As we have seen (*supra*, pp. 8 to 10), there has been no abandonment by respondents either of their accusations against petitioner upon which they relied in numerous charges and findings for the past two and a half years nor of the unfair hearing procedures the legality of which they have continuously asserted.[15] Notwithstanding that the Department's own Regulations require findings on each of the charges in the Statement of Reasons, the Secretary has issued no such findings accompanying his security determination of December 31, 1958. Only last October the Defense Department made a second final determination that petitioner had been a Communist Party member and had committed perjury in denying it (see *supra*, p. 7). Nevertheless, despite two emphatic requests by petitioner's counsel (see *infra*, Appendix B, pp. 33 to 35), the Secretary has

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[15] During the argument before the District Court on October 14, 1958, counsel for respondents bluntly asserted that the "hearing" granted persons charged with being security risks need not be a full and fair hearing:

> "First of all, I would like to say that the Plaintiff is not entitled to 'a full and fair hearing.' He used that term, but that is a term used in the Administrative Procedures Act—equivalent to judicial trial. No full and fair hearing. It is used as a term of art. No requirement there be confrontation of witnesses; and no requirement that there be compulsory disclosure of the Government's files" (R. 470).

No slightest intimation of a repudiation of this official statement has yet appeared in this proceeding or elsewhere.

refused to disavow his repeated accusations, to find that petitioner was never a Communist Party member and, indeed, even to issue any findings whatever.

Moreover, the Secretary has even failed to meet the specific requirement of his Industrial Personnel Security Regulations that clearances include a statement that "the granting of clearance . . . for access to classified information is clearly consistent with the interests of the national security" (§ 20e). As far as published reports indicate, petitioner's is the first case in the history of the Industrial Security Program where clearance was granted in the "*national interest*" rather than in the interest of "*national security*" as required by the Regulations. This unprecedented departure from the Regulations must find its explanation in the Secretary's willingness to assist the Department of Justice by finding petitioner's clearance in the "national interest", while still refusing to hold that his clearance is "clearly consistent with the interests of national security", for the simple reason that the Department will not disavow nor reject the accusations of its six secret informants. In a word, the Secretary gave petitioner a clearance without finding him innocent or secure.

After two and a half years of security proceedings petitioner's clearance is apparently still inconsistent with the national security interest, but is apparently required by some *other* national interest. If that other interest were abated by the dismissal as moot of petitioner's suit, the interest of national "security" might well once again assume the overriding importance it was given by respondents until this Court's grant of *certiorari*. Under these circumstances the second criteria of "likelihood" of renewal is fully met, for it is clear there has been no confession whatever of the error and wrongfulness of the procedure petitioner chal-

lenges, but merely a last minute attempt to avoid a binding adjudication which might serve to limit the Defense Department's use of the unfair and one-sided "hearing" procedure prescribed by its continuing Regulation.[16]

Conclusion

A primary ground for review relied upon in petitioner's request for certiorari was the fact that this case provides material illumination and amplification on the confrontation issue. Petitioner pointed out that his case illustrates the incredible, yet inevitable, injustice which results from the arbitrary denial of confrontation in security hearings. Respondents' most recent action has not diminished, but rather increased, the considerations militating towards this Court's review. Two and a half months after the Department of Defense had for a second time finally validated the accusations of faceless informants that petitioner had been a Communist Party member (and that he has perjuriously denied such membership), the same Department found petitioner's clearance for secret information "in the national interest." We cannot imagine a clearer illustration of the inevitable unfairness of a "hearing" Regulation which precludes confrontation than the various decisions here which permitted diametrically opposed conclusions on the identical undisclosed "evidence".

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[16] No similar effort to moot the *Greene* case has been made, apparently because the Government has no fear of a "confrontation" adjudication there. In its suggestion of mootness in the case at bar, the Government points out that "the *Greene* case is still pending and will present to the Court the *general* validity of the Industrial Security Program of the Defense Department" (p. 10; emphasis supplied). This delicate phraseology is not unintentional, but rather quite consistent with the Government's position in opposing certiorari in *Greene* that that case does *not* present any issue of confrontation for this Court's determination (*Greene* Op., p. 16).

In any event, on the single question of mootness here presented, it is clear that there continues to be a case and controversy for judicial resolution. Petitioner continues subject to the likelihood of further security proceedings under the "no-confrontation" Regulation notwithstanding his last minute clearance "in the national interest" rather than the interest of "national security." As long as *Southern Pacific* stands as precedent, the Government cannot, any more than a private individual, preclude a binding adjudication by unrepentent discontinuance of its *sub judice* practices.

We fully appreciate the Solicitor General's difficulty in being asked to justify the Defense Department's "no-confrontation" procedure before this Court.[17] But we respectfully suggest that the appropriate course for the Government is confession of error in this Court or a return to traditional hearing practices by the abandonment of the Defense Department's no-confrontation Regulation. As this Court observed in *Young* v. *United States*, 315 U.S. 257, 258:

> "The public trust reposed in the law enforcement officers of the Government requires that they be quick to confess error when, in their opinion, a miscarriage of justice may result from their remaining silent."

It is respectfully submitted that respondents' suggestion of mootness be denied or, if the question of mootness be deemed worthy of further consideration, that its deter-

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[17] This is not the first time that a dilemma on the issue of confrontation has been presented to the Solicitor General. When a similar issue was presented in *Peters* v. *Hobby*, 349 U.S. 331, the Solicitor General declined to file a brief or give oral argument on behalf of the Government.

mination be deferred until after the Court has had the benefit of the oral arguments.

Respectfully submitted,

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APPENDIX A

Amended Statement of Reasons of June 19, 1958 (R. 72-73) against Charles Allen Taylor [18]

"(2) Your sworn reply dated October 9, 1956 to the Statement of Reasons issued under date of September 10, 1956, and your testimony given under the applicability of Title 18, Section 1001, of the United States Code, during the hearing held in your case before the New York Industrial Personnel Security Hearing Board on November 1, 2, and 14, 1956, contain, in substance, the following material statements which were deliberately and knowingly either false or misleading.

(a) That you have never been a member of the Communist Party or of any branch of the Communist Party.

(b) That before your receipt of the Statement of Reasons in this case you had no knowledge of the subversive aims and purposes of the Communist Party.

(c) That you have never had a sympathetic interest in Communism.

(d) That you have not knowingly paid Communist Party dues.

(e) That you have never paid any money that to your knowledge went to the Communist Party.

(f) That you have not attended Communist Party meetings.

(g) That you have never visited Communist Party Headquarters when located at 75½ W. Chippewa Street, Buffalo, New York.

(h) That no group or organization other than your own local union sought your support for opposition to the "no strike pledge" during 1942 and 1943 while you were employed by Bell Aircraft at Buffalo, New York.

(i) That you did not know Clara Lester or ever hear her name until the hearing mentioned in subparagraph 4(2), preceding.

(j) That you did not know Svea Kate (Katz).

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[18] These charges were found "true as stated" as late as October 13, 1958 (R. 120, 122-3).

(k) That you did not know Sam Wiseman, at least not prior to 1943.

(l) That your answer "None" to Item 26 of your aforementioned Personnel Security Questionnaires dated 8 September 1954 and 2 July 1956, in so far as such answer was intended to encompass membership in the Communist Party or any of its subdivisions, subsidiaries, and affiliates, was a truthful answer.

(m) That your answer "No" to questions 1 through 6 of your aforementioned "Certificate of Non-Affiliation with certain Organizations" dated 2 July 1956, in so far as such answer was intended to encompass membership in the Communist Party or any of its subdivisions, subsidiaries, and affiliates, and in so far as it was intended to encompass affiliation or association with the Socialist Workers Party or with the Communist Party or any of its subdivisions, subsidiaries, and affiliates, was a truthful answer."

APPENDIX B

Telegram from Joseph L. Rauh, Jr., to the Secretary of Defense, January 5, 1959

"Reference is made to security case of Charles Allen Taylor. In September 1956 Taylor was falsely charged by Statement of Reasons emanating from office of Secretary of Defense with having been a member of, having paid dues to, and having held a membership card in, the Communist Party. In June 1957 your office found these charges quote true as stated unquote. On February 3, 1958 following a direct appeal to you by Mr. Taylor, your General Counsel held that the adverse findings against Mr. Taylor were quote reasonably supported unquote and on May 30 he reiterated that determination quote by direction of the Secretary of Defense unquote. As late as October 13, 1958 your office issued findings not only reaffirming the earlier findings of Taylor's past Communist membership and activity but also finding that he had under oath quote deliberately and knowingly unquote made quote false or misleading statements unquote in denying past membership and activity. These findings were predicated upon accusations by secret informants unknown to Mr. Taylor. On the basis of this secret information and the findings that Mr. Taylor had been a Communist and was now a perjurer, your office concluded on October 13, 1958 that the granting of clearance to Mr. Taylor quote for access to classified defense information is not clearly consistent with the interests of national security unquote. On December 31, 1958, after the supreme court granted certiorari in Mr. Taylor's case, your office advised quote that the Secretary of Defense, after considering all the available information, has determined that the granting of clearance to Mr. Charles Allen Taylor for access to secret defense information is in the national interest unquote. Despite the regulations of the Department of Defense explicitly requiring that security determinations shall include findings with respect to each of the allegations set forth in the Statement of Reasons, you have made no new findings whatever. We respectfully request immediate

findings (i) reversing the earlier findings, (ii) withdrawing the false charges, (iii) announcing that Mr. Taylor has never been a member of the Communist Party, never paid Communist Party dues, never attended Communist Party meetings, etc., and (iv) establishing that he has been truthful in so asserting. Failure to issue new findings fully clearing Mr. Taylor of charges against him asserted in Statement of Reasons and renouncing all reliance upon the secret informants who gave erroneous adverse information only compounds the incredible injustice done Mr. Taylor by two and a h[illegible]f years of security taint based on the now admittedly false statements of secret informants."

Letter from General Counsel of Department of Defense to Joseph L. Rauh, Jr., January 6, 1959

I write at the direction of the Secretary of Defense to reply to your telegram of January 5, 1959, addressed to the Secretary in connection with the matter of the industrial security clearance of your client, Charles Allen Taylor.

The language of the order of December 31, 1958, which reads "* * * hereby superseding all previous orders in this case" completely expunges all previous findings in this case, as if they had never been rendered.

The Secretary, by his "Finding and Order" of December 31, 1958, has found that the requested clearance of Charles Allen Taylor should be granted.

Telegram from Joseph L. Rauh, Jr., to the Secretary of Defense, January 10, 1959

"On January 5th we telegraphed you concerning the Charles Allen Taylor case asking that you issue findings quote (i) reversing the earlier findings, (ii) withdrawing the false charges, (iii) announcing that Mr. Taylor has never been a member of the Communist Party, never paid Communist Party dues, never attended Communist Party meetings, etc., and (iv) establishing that he has been truthful in so asserting unquote. We have now received General Counsel Dechert's reply of January 6th stating that the order of December 31, 1958 quote completely expunges all

previous findings in this case, as if that had never been rendered unquote. You will readily recognize that this reply is unresponsive and does not meet the regulations of your Department. Defense Department Industrial Security Regulations require that security determinations quote shall include a finding with respect to each of the allegations set forth in the statement of reasons unquote. Your withdrawal of findings can in no way be interpreted as the findings required by these regulations. We again request a finding on each of the allegations in the statement of reasons. As we stated in our telegram of January 5th quote failure to issue new findings fully clearing Mr. Taylor of charges against him asserted in Statement of Reasons and renouncing all reliance upon the secret informants who gave erroneous adverse information only compounds the incredible injustice done Mr. Taylor by two and a half years of security taint based on the now admittedly false statements of secret informants unquote."

(3897-6)

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Supreme Court, U.S.
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JAMES R. BROWNING, Clerk

No. 504

In the Supreme Court of the United States

OCTOBER TERM, 1958

CHARLES ALLEN TAYLOR, PETITIONER

v.

NEIL MCELROY, A. TYLER PORT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM IN REPLY TO PETITIONER'S OPPOSITION TO THE GOVERNMENT'S SUGGESTION OF MOOTNESS

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D.C.

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In this reply to petitioner's Opposition to our memorandum suggesting that the cause is now moot, we shall (1) correct certain significant errors in petitioner's account of what has transpired in this case with respect to mootness; (2) show that the action recently taken in petitioner's case was the application of a new general rule, and not an arbitrary *ad hoc* effort to prevent judicial redress; (3) point out that there is no likelihood of petitioner's again being subjected to "secret" clearance proceedings under the Industrial Security Program or the basis of the information now or likely to be known; and (4) discuss the rules as to mootness which this Court has been consistently applying but which petitioner disregards.

I. PETITIONER'S INCORRECT FACTUAL STATEMENTS AND ASSUMPTIONS

Although petitioner's factual errors have no direct bearing on the legal problem of mootness, it is appropriate to correct the most significant of them at the outset.[1] The true facts will help to explain the latest administrative action in this case, as well as to dispel petitioner's exaggerated and unfounded fears of further proceedings.

First, contrary to petitioner's surprising but repeated assertion (Opp. 9, 19 (fn. 8), 20), we did *not* intend to concede and did *not* concede in our memorandum on mootness that the petitioner may well be subjected again to security clearance proceedings.[2] As shown in some detail, *infra*, pp. 4–15, the contrary is true. There is no likelihood that petitioner will once again be subjected to loss of his "secret" clearance on the basis of the information now available or anticipated.

Second, petitioner recites a portion of the detailed amended statement of *charges* against him, and then implies that the final adverse findings of the Defense Department upheld each of these charges as stated

[1] We refer, of course, not to the facts relating to the original adverse determinations or proceedings against petitioner, but to the facts relating to mootness which appear on the open record. We do not deal in this memorandum with petitioner's factual errors relating to the proceedings leading to the adverse rulings.

[2] In asserting that the Government has made such a concession, petitioner misreads (Opp. 9) a sentence in our mootness memorandum (p. 7) which was designed to *contrast* the present case of a formal rescission of an administrative order with the mere cessation by a private party of injurious conduct which might recur.

(Opp. 7, 31–32). This is materially inaccurate. The actual findings are set forth with particularity in the Defense Department's letter to petitioner dated October 13, 1958 (R. 120–124). Comparison of those actual findings with the amended charges (R. 68–75) shows that certain of the pertinent charges were *not* upheld; and the omissions are quite significant. For instance, there are no findings[3] (*a*) that petitioner lied when he said that he had never had a sympathetic interest in Communism, or (*b*) with respect to petitioner's alleged affiliation or association with the Socialist Workers Party (R. 122–123). And there are affirmative findings that in the latter part of petitioner's membership in the Communist Party (1942–1943) he "became actively and outspokenly opposed to certain Communist Party policies and Communist Party endorsed candidates for union office, and [he] stopped paying Communist Party dues and stopped attending Communist Party meetings", and that he was expelled from the Party in 1943 (R. 121). Further, there are no findings as to Communist membership or associations after 1943, and no findings at all of disloyalty.

Third, petitioner repeatedly implies (Opp. 2, 6, 9, 18, 25, 27) that the Defense Department's final findings necessarily rested on acceptance of the information given by all "six secret informants" of whose existence he had been told (R. 102–104). But there is no such finding in the case; and it is commonplace in trials or hearings for the triers of fact to base their

[3] The letter of October 13, 1958, makes it clear that, to the extent that affirmative findings were not made, the amended statement of charges was *not* sustained (R. 120).

decision on less than all the witnesses, or all the information, presented by the prevailing side. For all that petitioner or his counsel really know, that well-known fact of litigation may also be the truth here.

Fourth, petitioner, who does not and cannot know the true facts, implies that the case has not been "the subject of continuing administrative review by the Departments of Defense and Justice," as we stated in our memorandum (p. 5) (Opp. 7, fn. 2). We are, of course, not at liberty to reveal the intra-government course of proceedings in the case, but in the face of petitioner's incorrect innuendo we reiterate that for some time this case has been the subject of continuing administrative review by the Departments of Defense and Justice.

II. PETITIONER'S CLEARANCE AS A RESULT OF A GENERAL CHANGE IN THE INDUSTRIAL SECURITY PROGRAM

A. To the discerning eye, the facts we have set forth or indicated in Part I, *supra,* will reveal much (concerning the clearance of December 31st) that petitioner claims to be wholly unable to see. But the most curious facet of petitioner's Opposition is its total failure to refer to, or to discuss, the pointed suggestion in the Government's mootness memorandum (pp. 10, 18–19) that the action taken in petitioner's case on December 31st was the result of a general reconsideration of one aspect of the Industrial Security Program, and therefore could not at all be an arbitrary or *ad hoc* clearance "calculated to prevent impending judicial redress against a practice whose propriety defendant continues to assert" (Opp. 21).

When petitioner's case was brought to the attention of the Acting Secretary, he reviewed generally the matters involved and determined that a modification of the Industrial Security Program was appropriate. This modification is indicated in the Acting Secretary's memorandum of December 31st on the amendment of the Industrial Personnel Security Review Regulation (Govt. Memo. 18–19), which contemplates a general change in the Program to take account of the level of classified information at which access is sought, as well as the derogatory information in a particular case. Previously, no account had been taken of the level of classified information to be revealed to the particular individual. He had to be cleared for all levels, or for none. The December 31st memorandum was intended to effect a modification of this practice for the future. Although the Defense Department regulations have not yet been formally amended to incorporate this change, we have been advised by that Department that the factor indicated in the December 31st memorandum has, since that date, been applied to all pending and new cases to which that factor pertains. As contemplated by the memorandum, the regulations will shortly be formally modified to take account of this new element.

Petitioner is a lathe operator and he was a tool and die maker (milling machine operator) in a large aircraft plant—not an important official with wide supervisory or executive functions. Accordingly, it was decided that, in the light of all the information available, he could and should be appropriately granted access to "secret" information, *whether the derogatory findings made by the hearing board were or were not true.* If those findings were in fact true,

petitioner would still be accorded his clearance; the particular adverse facts found by the board would not be enough to debar him in the light of his job and personal history.[4] And if the findings were not in fact true, or if they were reached by improper procedures, petitioner would certainly be entitled to his clearance.[5]

The result is that, once the Secretary had determined to make this general change in the Industrial Security Program, it was unnecessary for him to canvass the truth or falsity of the board's findings in petitioner's case (or the procedure by which they were reached). In effect, a demurrer to the findings could be sustained by the Secretary—conceding their truth *arguendo,* petitioner was still entitled to clearance. By like token, it would be unnecessary to adjudge, in petitioner's case, the propriety of the procedures used by the board in making its findings.[6]

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[4] It will be recalled that the hearing board finally found (*supra*, pp. 3-4), with respect to petitioner's association with the Communist Party, that his membership covered only the period 1942–1943; that it terminated by expulsion in 1943; that in the latter part of his membership petitioner became actively and outspokenly opposed to certain Communist Party policies and Communist Party endorsed candidates for union office; and that he stopped paying Party dues and attending Party meetings. See R. 120–121. There were no findings of disloyalty, or of any association with communism after 1943.

[5] No similar action was taken in the case of *Greene*, No. 190, this Term, because it was not considered that that case, taking into account its own particular facts, falls within the new policy.

[6] Petitioner assumes repeatedly, throughout his Opposition, that the Acting Secretary's determination of December 31st was based on different findings from those made by the board. As we have pointed out in the text, this is not necessarily the case.

Thus, petitioner is far wide of the mark in insisting—as he repeatedly does (Opp. 2, 8, 9, 10, 18, 25, 26-27)—on an affirmative "exoneration from or recantation of the charges" of Communist Party membership, and on "repudiation" of the "accusations" by the "secret informants." As our initial mootness memorandum makes undeniably plain, the board's adverse findings have been totally expunged as if they had never been made. More than that cannot be demanded.

The law is full of instances in which an individual has been freed (by a subsequent procedural or general ruling) from a particular sanction, based on adverse factual findings, without any requirement that new factual findings "clearing" him be made by the fact-finding tribunal or agency after the sanction has been removed. In the criminal law, defendants routinely have their convictions set aside or reversed, after trial and verdict, for defects in the indictment, failure to state an offense, trial or procedural errors, or defenses such as the statute of limitations or lack of jurisdiction, etc. Obviously, a defendant so freed cannot insist on new findings or a new verdict declaring that, as a matter of actual fact, he did not do the acts with which he was charged; indeed, a defendant whose conviction is finally reversed on such grounds cannot compel the appellate court to go further and inquire into the sufficiency of the evidence, even though he contends that such a factual inquiry would demonstrate his innocence of the acts charged and thus clear him of any possible "taint" arising from the original verdict.

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The same has been true of security determinations which have been overturned for jurisdictional reasons. In *Peters* v. *Hobby*, 349 U.S. 331, the adverse findings of the Loyalty Review Board were expunged for lack of jurisdiction, but the Board was not required to make new findings favorable to that petitioner. In *Cole* v. *Young*, 351 U.S. 536, the Court invalidated Cole's discharge as improperly based on the Act of August 26, 1950, 64 Stat. 476, 5 U.S.C. 22–1, but there was no requirement that the Department of Health, Education, and Welfare then make new findings of fact favorable to him. Similarly, in *Service* v. *Dulles*, 354 U.S. 363, the adverse determination and findings were expunged, but the State Department was not required to make new favorable findings. It was sufficient to expunge the old findings and determinations.

So here, the adverse findings and determinations have been completely expunged and superseded as a result of reconsideration under the modification adopted in the Defense Department on December 31, 1958. It is just as if the regulations had been formally amended, and petitioner's case reviewed and reconsidered (and petitioner granted clearance) under that change, which makes irrelevant any further inquiry into the particular facts of his case. The controversy has been effectively ended, as part of a general change in the Industrial Security Program, by the only administrative determination petitioner sought or could seek, *i.e.*, a clearance for access to "secret" information. See also *infra*, pp. 14-15, 21–24.

Moreover, petitioner has not been treated, with respect to the making of new findings, any differently from others who have been granted clearance after first being denied it. In the Industrial Security Program, it has been the practice, when a prior public decision adverse to the employee is reconsidered and clearance granted, simply to announce that clearance is now accorded; it has not been the practice to make new, favorable, findings. Accordingly, petitioner has no ground for complaint that in this respect he has been discriminated against, or treated otherwise than pursuant to the normal prevailing procedures.

B. Petitioner contends further that the action of the Secretary of Defense granting him a security clearance violated the regulation governing the Industrial Security Program in two respects (Opp. 8, 26-27, 28):—(1) The Secretary did not include as part of his determination a finding with respect to each allegation set forth in the Amended Statement of Reasons, as provided in Paragraph 20d of Defense Department Directive 5220.6; and (2) the Secretary found that the grant of a clearance to petitioner "is in the national interest," rather than "clearly consistent with the interests of the national security," which is the over-all standard prescribed by the directive.

The complete (but not the only) answer to this contention is that the Secretary of Defense could not have violated this regulation since he did not bind himself by it. The directive was issued to govern the operation of the Industrial Personnel Security Review Program, which it established, and the Secretary

was not designated as a full element of that program.[7] Thus, petitioner can derive no support from cases like *Service* v. *Dulles*, 354 U.S. 363, and *Accardi* v. *Shaughnessy*, 347 U.S. 260, which hold that an executive officer can limit his own authority by regulations made binding upon himself even though, in the absence of such self-imposed limitations, he would have possessed sufficient power to take the action under challenge. Here, the power of the Secretary to grant access to classified military information, and his power to review the determinations of the industrial security boards, was not limited by the procedures applicable to those boards, or by any other procedures. Under the directive, determinations of the Industrial Personnel Security Review Board are to be final subject to reversal by the Secretary of Defense.[8] In exercising this review power, the procedures to be

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[7] Paragraph 5 of the directive provides:

Program. There is hereby established the Industrial Personnel Security Review Program, consisting of the following elements:

a. The Office of Industrial Personnel Security Review.

b. The Industrial Personnel Security Screening Board (hereinafter called the Screening Board).

c. The Industrial Personnel Security Hearing Boards (hereinafter called the Hearing Boards).

d. The Industrial Personnel Security Review Board (hereinafter called the Review Board).

[8] Paragraph 21b of the directive provides:

b. The determination of the Hearing Board as announced by the Director pursuant to paragraph a above shall be final subject only to:

(1) consideration by the Review Board at the request of the Director, the Secretary of Defense, or the Secretary of any military department; or

(2) reconsideration by the Hearing Board at the request

employed by the Secretary and the grounds upon which he may act are not prescribed by the regulation but are left to his complete discretion as the head of the Department. Petitioner's argument ignores this clear meaning of the directive.

Not only has the regulation not been made binding in this respect upon the Secretary of Defense, but the requirement of Paragraph 20d that findings be made with respect to each allegation contained in the Statement of Reasons is expressly made applicable only to the Industrial Personnel Security Hearing Boards. The heading of Paragraph 20 is *"Hearing Board Determination"* and it is this determination, not the determination of the Secretary of Defense, which under subparagraph d must "include a finding with respect to each of the allegations set forth in the Statement of Reasons." See also Paragraph 22a. In no place does the regulation impose such a requirement upon the Secretary, who is free to grant a security clearance for whatever reason he deems adequate and with-

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of the Director on the ground of newly discovered evidence or for other good cause shown.

Paragraph 22c of the directive provides:

c. Determinations of the Review Board shall be final, subject only to:

(1) Reconsideration on its own motion or at the request of the person concerned, addressed through the Director, on the ground of newly discovered evidence or for other good cause shown;

(2) Reconsideration by the Review Board at the request of the Secretary of Defense or the Secretary of any military department; or

(3) Reversal by the Secretary of Defense, or reversal by joint agreement of the Secretaries of the three military departments at the request of one of such Secretaries.

out making or publishing any particular factual conclusions with respect to the employee involved.[9]

For similar reasons, petitioner is not in a position to complain of the Secretary's failure to mention the over-all standard of the directive that a clearance must be denied or revoked if it "is not clearly consistent with the interests of the national security." For this is obviously not a requirement included in the regulation for the benefit of the employee under consideration; it affords no procedural or substantive rights but is a guide to the industrial security boards designed to afford the maximum protection for classified military information, and was not intended to bind the Secretary himself.[10] Although the security boards had previously concluded, on the basis of certain findings, that the grant of a clearance to petitioner would not be clearly consistent with the national security, those findings have been expunged, so that any possible injury resulting to petitioner from them has been

[9] In addition, it should be pointed out that although the regulation requires the *boards* to *make* findings there is no requirement that the findings be *published* to the individual concerned. As noted above (*supra*, p. 9), it has not been the practice to *publish* findings when a determination *to clear* is made and announced.

[10] Even if the standard of "clearly consistent with the interests of the national security" were binding on the Secretary under the regulation, we do not believe that an individual as to whom the Secretary might apply a lesser standard would have any standing to complain under *Accardi* and *Service*, *supra*. Those decisions stand for the proposition that an individual has a right to demand that the head of a department comply with regulations imposed for the benefit of the individual. There is nothing in the opinions suggesting that the head of a department cannot loose the strict bonds of a regulation where such lenity would be to the advantage of the individual.

undone as completely as could be required by a decision of this Court. Once the adverse findings have been superseded, if the Secretary of Defense then determines that it is desirable to grant petitioner (and those in the same situation) a clearance under a different principle than the rules previously imposed solely for the benefit of the Government, petitioner has no cause whatever to complain—he has received his clearance, and no findings adverse to him now exist. Realistically, petitioner is relying not on an alleged right to a security clearance, nor on a right not to be found a security risk without certain procedural protections, but on an asserted right to an affirmative determination by the Department of Defense that his access to defense secrets would in no way jeopardize the national security. There is no basis in the regulation or in any statute for this contention that, if a clearance is granted to him, it must be accompanied by such an affirmative determination couched in those terms. In making the change contemplated by his memorandum of December 31st (discussed *supra,* pp. 4–6), the Secretary was free to decide that "the national interest" (the term he used in petitioner's clearance order) would appropriately call for a consideration of the employee's position and personal history in determining whether his clearance would be "clearly consistent with the interests of national security."

III.

THE UNLIKELIHOOD OF FURTHER SECURITY PROCEEDINGS AGAINST PETITIONER

Petitioner makes much of the "substantial likelihood"—as he puts it—of renewed security proceedings

against him (Opp. 19). In reality, this "danger" does not exist under the present or the reasonably foreseeable circumstances, and the information available.[11]

As pointed out in Part II, *supra*, the Industrial Security Program has been so modified that individuals of petitioner's level of position, and with petitioner's type of personal history, will be cleared for access to "secret" defense information, where necessary for their work. Petitioner's clearance was accorded under that general change in the Program. It was also accorded by the head of the Department of Defense who had available all of the information about petitioner known to that Department. On the basis of that information, collected by extensive investigation, there is no likelihood of renewed security proceedings against petitioner. A general rule has been established and petitioner's case has been evaluated, at the highest level, under that new general principle. The courts will not treat "as a serious danger" that a high government official or agency "will change a deliberately formulated policy after urging it on this Court against the [petitioner's] standing to ask for relief." *Eccles* v. *People's Bank*, 333 U.S. 426, 433.

Petitioner complains repeatedly that the security regulation is still in effect (Opp. 9, 18, 28), but he singularly fails to note that the Program has been modified (and the regulation will be formally amended) on a point decisive for his and comparable cases. The provisions of the regulation as to hearings

[11] This is not the place to discuss petitioner's broad, general, and inaccurate charges against the conduct of the Industrial Security Program as a whole (Opp. 22–25). We confine ourselves to petitioner's own case.

and "confrontation," which petitioner challenges, remain intact, but (as we have shown *supra*, pp. 5–8) so far as petitioner's case is concerned those provisions are now irrelevant. He has been granted clearance, whether or not the expunged findings previously made under the disputed procedures were accurate, and whether or not those procedures are proper in his particular class of case.

In other words, the Industrial Security Program, as it now stands, presents no "threat" and no "danger" to this petitioner. There is no likelihood of a recurrence of proceedings against him. He is in at least as good a position as the hundreds of thousands of other individuals who have been cleared for access to defense information. In one sense, his position is even better, since his particular case has been reviewed at the highest departmental level under the new principle adopted at that level. If petitioner continues nevertheless to have a "case" or "controversy" with the Defense Department, so do all of the thousands of others whose cases have been considered under the Industrial Security Program and who have been accorded clearance. Each of them has as much right to maintain suit as does petitioner. But it is perfectly plain that those hundreds of thousands have no case or controversy with the Defense Department. See also *infra*, pp. 22–24.[12]

[12] Petitioner complains (Opp. 9) of being required to fill out new personnel security questionnaires, etc. On inquiry, we have ascertained that these requirements were exclusively *company*-imposed by the Bell Aircraft Corporation, incidental to petitioner's reemployment. These requirements are *not* Government-imposed, and most emphatically petitioner is *not* now

IV. THIS COURT'S JURISPRUDENCE ON MOOTNESS, AS APPLIED TO PETITIONER'S CASE

A. Where the challenge is to formal government action which is formally withdrawn or ended during the course of the litigation, this Court's decisions –both those cited in our initial memorandum on mootness and those relied upon in petitioner's Opposition– have consistently followed the principle that the litigation is moot unless there is a strong, real, or substantial likelihood that the challenged government action will be repeated against the particular person. Despite petitioner's strenuous assertions, the Court has *not* applied the standard that, for mootness to result, recurrence must be absolutely impossible or the government agency must be entirely incapable of repeating the challenged action.

1. In our initial memorandum on mootness (pp. 7–8), we referred to several of the Court's decisions applying this principle of mootness to government orders or actions.[13] In several of those cases, there

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"once more" being subjected to "the standard security clearance procedure" of the Government (Opp. 9). The Government has taken no steps whatsoever to have petitioner fill out new questionnaires, etc.

[13] Petitioner dismisses most of these cases (Opp. 16) on the ground that they were decided without opinion, or that the suggestion of mootness was unopposed. But it has been customary in recent years for the Court to dispose of cases on the ground of mootness by a *per curiam* order; and the fact that no opposition was presented may well mean that counsel in those cases recognized the governing rules of mootness which this Court has been applying. Moreover, whether opposed or not, those decisions of mootness are formal and binding adjudications by the Court that no case or controversy existed any longer.

had been no announced change in policy or program (as there has been here), but simply a withdrawal or ending of the particular challenged order. In many of them, the possibility of recurrence was substantially greater than in this case where a general change has been announced and is now being followed. See *e.g.*, *Association of Lithuanian Workers* v. *Brownell*, 355 U.S. 23 (withdrawal of designation under the Attorney General's "subversive list," without any announced change in policy); *Garcia* v. *Landon*, 348 U.S. 866 (withdrawal of deportation order, which could be reissued); *National Association for the Advancement of Colored People, Inc.* v. *Committee on Offenses*, 358 U.S. 40 (expiration of state legislative committee, which could be reestablished); *United States* v. *Amarillo-Borger Express, Inc.*, 352 U.S. 1028 (expiration of ICC order capable of being repeated); *Bracken* v. *Securities and Exchange Commission*, 299 U.S. 504 (withdrawal of administrative subpoena, which could be reissued); *Howard* v. *United States*, 340 U.S. 898 (expiration of grand jury, but petitioner could be called before another grand jury); *Montgomery Ward & Co.* v. *United States*, 326 U.S. 690 (return of seized property, which could be reseized); *Commercial Cable Co.* v. *Burleson*, 250 U.S. 360 (same); *Gray* v. *Board of Trustees*, 342 U.S. 517 (admission of colored students to the University of Tennessee); *St. Pierre* v. *United States*, 319 U.S. 41, 43 (expiration of contempt sentence; real possibility of future questioning).

In these decisions and others, the Court has clearly indicated that the mere "possibility" or "capability" of renewal of the withdrawn or expired order is in-

sufficient to make a continuing "case" or "controversy."

2. Petitioner relies (Opp. 11, 14–16, 20, 21), almost solely, on three or four of the Court's decisions which do not at all support him because they stand only for the proposition that mootness may not result where there is shown to be a strong, real, or substantial likelihood of repetition (not a mere "possibility" of renewal). In *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission,* 219 U.S. 498, the probability of repetition was clear; the I.C.C. order was a short-term one, almost certain to be repeated in similar short-term fashion. In those circumstances, the Court referred to the questions involved in the administrative order as manifestly continuing in nature (p. 519).[14] Cf. *St. Pierre* v. *United States,* 319 U.S. 41, 43. *McGrain* v. *Daugherty,* 273 U.S. 135, 180–182, was a comparable case in which a continuing Senate committee was apparently ready to resume its inquiries if the Court upheld its authority. *Panama Refining Co.* v. *Ryan,* 293 U.S. 388, 413–414, involved amended regulations containing the same disputed requirements as the regulation originally attacked. And in *Leonard* v. *Earle,* 279 U.S. 392, 398, an action to compel issuance of a license for the next year was not mooted by the expiration of the year, where it was clear that the plaintiff intended to continue in the licensed business and the defendant official would in-

[14] The Court also referred to the fact that the Commission's order might, to some extent, be the basis of further proceedings (p. 515). See also, to this effect, *Southern Pacific Co.* v. *Interstate Commerce Commission,* 219 U.S. 433, 452.

sist on compliance with the challenged requirements before issuing the necessary license.[15]

The gist of these latter decisions (which form the core of petitioner's Opposition) is that the ending, expiration, or suspension of the challenged administrative order will not moot the case *if*, but only if, the order continues to have substantial legal effects *or* there is a real (not merely a theoretical) likelihood that the order will be repeated or renewed as to the complaining parties. As we have shown, *supra*, pp. 4-15, that is not this case. The order denying petitioner clearance has been expunged and superseded. A new order has granted the clearance pursuant to a general modification in the Industrial Security Program. In the present circumstances or those reasonably foreseeable, there is no real likelihood that this petitioner (or those similarly situated) will again be subjected to adverse security proceedings.[16]

3. Petitioner attacks the principles of mootness which the Court has been applying to withdrawal of challenged government orders as an unfair "double standard" (Opp. 14, 16), because mootness has sometimes not been found where *private persons* merely cease their illegal or wrongful conduct. But petitioner

[15] Likewise, in *Henderson* v. *United States*, 339 U.S. 816, 823, the challenged order of the ICC was still outstanding and would probably affect the petitioner if he traveled again by railroad.

[16] *Gray* v. *Board of Trustees*, 342 U.S. 517, 518, was an action to compel the university admission of some Negro students, and of other Negroes "similarly situated." This Court held the action moot (over opposition), where the plaintiffs' requests for admission were granted during litigation and "there is no suggestion that any person 'similarly situated' will not be afforded similar treatment."

ignores that the action of the Secretary of Defense in this case was not simply a "cessation" of conduct challenged as unlawful—as is the case when a private party discontinues an asserted violation of law. An official order was expunged and superseded, and a different order officially issued which has ended all asserted injury to petitioner. In such a case, it is appropriate to accept the formal official action on its face, unless there is good reason to believe otherwise. See *Gray* v. *Board of Trustees,* 342 U.S. 517, 518, footnote 16, *supra; Eccles* v. *People's Bank,* 333 U.S. 426, 433, quoted *supra,* p. 14.[17]

Moreover, the basic issues petitioner raises are constitutional, and constitutional issues should not be decided in the absence of a concrete, present, actual, and existing controversy in which the parties' rights are really at stake.[18] In litigation in which the questions are statutory, common-law, or factual—non-constitutional issues—it may be proper to accede to the "public interest in having the legality of the practices settled" (*United States* v. *W. T. Grant Co.,* 345 U.S. 629, 632). But the special canons of constitutional adjudication,

[17] Something should also be said for the public interest which the Government was vindicating in the line of cases in which private parties have merely ceased violating a statute or regulation, and the Government still seeks an adjudication. Petitioner can ask to vindicate, not a public right, but only his own private rights; and he can attempt to redress only his own alleged private injuries. He cannot rightly claim to be acting on behalf of others. And since his own claims have been satisfied, there is nothing left for him to vindicate by this suit.

[18] See *e.g., United Public Workers* v. *Mitchell,* 330 U.S. 75, 90; *United States* v. *Automobile Workers,* 352 U.S. 567, 589-590; *Ashwander* v. *Tennessee Valley Authority,* 297 U.S. 288, 346-348; *Rescue Army* v. *Municipal Court,* 331 U.S. 549.

which strongly counsel the avoidance of constitutional determinations if possible, do not permit similar leeway in a constitutional case like the present one where the petitioner will obtain nothing by a reversal of the decision below. Cf. *United States* v. *Johnson*, 319 U.S. 302, 305.

B. Petitioner also makes some claim that he has not received all the relief from the respondents to which he is legally entitled (Opp. 17–19). We need not repeat the demonstration in our opening mootness memorandum (pp. 5–7) that, having received the clearance he sought, petitioner can properly ask nothing more. The prayers of his complaint are set out in footnote 2, page 6, of our earlier memorandum. The first prayer is for a hearing with opportunity to confront adverse witnesses. But obviously petitioner cannot now demand a hearing for its own sake; and the hearing he asks would now serve no purpose whatever since its objective could be only to help petitioner clear himself, and that is no longer necessary now that he has received his clearance.[19]

The second prayer is for a declaration that the determination of June 14, 1957 (and presumably the later determination of October 13, 1958) is in violation of his constitutional rights. But the adverse determinations of June 14, 1957, and October 13, 1958, have been wholly expunged and superseded as if they had

[19] Petitioner's first prayer does not even ask that the Defense Department make findings on the basis of the hearing he still demands. Presumably, it is petitioner's present position that the hearing should be held even though no findings are to be made by the Department!

never been; they no longer have any vitality or effect. There is therefore nothing outstanding on which this Court can operate; and the naked request for a declaratory judgment of illegality cannot suffice to keep the controversy alive. There was a similar request for a declaratory judgment in *Association of Lithuanian Workers* v. *Brownell*, 355 U.S. 23, but this Court nevertheless held the case moot. See also, to the same effect, *St. Pierre* v. *United States*, 319 U.S. 41; *Bus Employees* v. *Wisconsin Board*, 340 U.S. 416, 418; *Gray* v. *Board of Trustees*, 342 U.S. 517—all indicating that a request to declare the illegality of past conduct, with no future operative effect, cannot avail to prevent mootness.

The third of petitioner's prayers in his complaint is that the respondents be restrained from enforcing the prior adverse determinations—which the prayer says should be reversed, rescinded, and annulled. Again, there is nothing left for the Court to do, and no need for the relief requested. The adverse determinations are no longer in effect, but have been fully expunged and superseded.

Petitioner did not ask, in his District Court complaint, for declaratory or injunctive relief with respect to the Defense Department's industrial security regulation itself, and his petition for certiorari centered on the particular administrative determinations against him rather than on the regulation as such (Pet. 2–3, 6–7). Nevertheless, he now asserts a right to a broad declaratory adjudication that the "no-confrontation requirement of the Defense Department's Industrial Security Hearing Regulations is

constitutionally and statutorily defective" (Opp. 18). Of course, as pointed out above (p. 15), petitioner now has no more right to such a declaration than the hundreds of thousands of others who have been processed and cleared under the Industrial Security Program. At least in the absence of grounds for believing that the regulation will be applied adversely to him, the mere existence of the regulation does not give any person or employee—no matter how much he may disagree with or deplore it—the right to an adjudication that the regulation is invalid. For the regulation imposes no present duties or requirements, and demands no action. It has no effect until the security clearance process is begun and the regulation is invoked. Just as with a comparable statute which is abstractly claimed to be invalid by persons not directly affected, no actual case or controversy can exist until, at the very least, there is a likelihood that the regulation will be invoked or applied or used against the particular claimant. Otherwise, the careful confines of federal adjudication would be largely nullified at the behest of litigants eager to test, abstractly, the lawfulness of all kinds of legislative or administrative action. Even though such questions may be important and their resolution useful, the federal courts have no power to decide them as an aid to possible *future* controversies or as a guide to future action. *Bus Employees* v. *Wisconsin Board,* 340 U.S. 416, 418; *St. Pierre* v. *United States,* 319 U.S. 41, 42; *United States* v. *Alaska S. S. Co.,* 253 U.S. 113, 115–116; *California* v. *San Pablo & Tulare R. R. Co.,* 149

U.S. 308, 314; cf. *Eccles* v. *People's Bank*, 333 U.S. 426, 431–432.

CONCLUSION

We have been at pains to set forth our position in detail, because petitioner's Opposition reveals a gross misunderstanding of both the facts and our legal position on mootness. Petitioner has sought to create a strawman out of a congeries of bits and pieces. We believe that the Court should be informed of what has actually happened in this case. In addition, petitioner plainly desires to compel after-the-event adjudication of his case because he hopes that it will lead, *for others*, to the general legal rule he sponsors. But this approach is directly opposed to the whole federal judicial tradition. And we are frank to say that in any event we do not believe it a desirable practice, unless necessary to protect the claimant's own legal rights, for the Government to be forced to defend the legality of past administrative action which the administrators, on proper reconsideration of their administrative powers and discretion, have decided should be rescinded and changed and no longer kept in effect.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

FEBRUARY 1959.

U. S. GOVERNMENT PRINTING OFFICE 1959

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No. 504

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

CHARLES ALLEN TAYLOR,

Petitioner,

v.

NEIL McELROY, A. TYLER PORT,

Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR PETITIONER ON MOOTNESS

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The Government's last-minute Reply Memorandum, containing new contentions of fact and law not heretofore made, evidences the Government's quite understandable concern over the clear and present danger of reversal; even more it indicates panic at this Court's mere consideration of the case which bespeaks the need for that consideration far more eloquently than anything petitioner can say.[1] At the

[1] We regret the inadequacy of this Memorandum. The Government's Reply, containing 24 pages of essentially new contentions of fact and

same time, the Government has not had the temerity to oppose petitioner's suggestion (Opposition, pp. 2-3, 29-30) that the Court postpone the issue of mootness until after it has had the benefit of oral arguments in accordance with its practice in similar cases. See e.g., *Walling* v. *Helmerich & Payne*, 323 U. S. 37, 43; *Walling* v. *Reuter Co.*, 321 U. S. 671; *St. Pierre* v. *United States*, 319 U. S. 41; *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346; *Southern Pacific Terminal Co.* v. *I.C.C.*, 219 U. S. 498; *United States* v. *Trans-Missouri Freight Ass'n*, 166 U. S. 290. In the absence of such opposition, and in view of the bitterly contested issues of fact concerning the "likelihood of recurrence" upon which continued justiciability rests, adherence of this Court to its practice of postponing the issue of mootness until it has had the benefit of the oral arguments would appear especially warranted and necessary.

As concerns the question of mootness itself, we take this opportunity to note the significant shift of the Government's Reply away from the previous contention that the mere granting of clearance has disarmed the Court of its jurisdiction (Memorandum, p. 6). No longer urging that the *Trans-Missouri-Southern Pacific* doctrine is applicable only to the discontinuance of challenged *private*, as distinguished from *governmental*, practices, the Government's Reply instead places almost total reliance upon two different contentions, one of which went completely unmentioned in its first Memorandum and the other of which was only obliquely hinted at there.

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law, was not made available to petitioner until Friday, February 13th, coincident with its filing. In order to file this Supplemental Memorandum within the time allotted by the Office of the Clerk, it was necessary to print it on Monday, February 16th, along with petitioner's brief on the merits (attached hereto as Exhibit A), due at the same time as this Supplemental Memorandum. Since, in similar cases, this Court has followed the practice of postponing the issue of mootness until it has had the benefit of oral arguments (see text), petitioner will file a more detailed response to the Government's Reply in his reply brief on the merits.

The first of these contentions (Reply, pp. 20-21) is that, since petitioner raises constitutional issues, the Court should refrain from deciding petitioner's case "in the absence of a concrete, present, actual, and existing controversy . . ." But this is a confusion of policy and jurisdiction; the fact that petitioner raises constitutional issues does not go to the question whether the cause is moot for want of a "case or controversy." Moreover, petitioner's case is by no means limited to constitutional issues; petitioner urges in his brief on the merits (Appendix A, pp. 50 to 56) that the statutory foundation of the Industrial Personnel Security Review Program (if indeed there is any statutory foundation for the Program itself), must be interpreted to require a fair hearing, including confrontation and cross-examination. Indeed, the Government appears to concede justiciability with respect to such a statutory contention, stating that "in litigation in which the questions are statutory . . . it may be proper to accede to the 'public interest in having the legality of the practices settled' " (Reply, p. 20).[2] Finally, as we demonstrated in our Opposition to Government's Suggestion of Mootness, there is here a "concrete, present, actual and existing controversy" concerning petitioner's rights—a controversy arising from the Government's continuing enforcement of the challenged and unaltered Regulation against confrontation and the petitioner's continuing and very real jeopardy thereunder.

The Government's other major contention is that a "new general rule" (Reply p. 1) of the Industrial Security Program renders unlikely petitioner's subjection to security proceedings in "the present or the reasonably foreseeable

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[2] The Government's implication that no statutory issue is involved illustrates the danger of action on the question of mootness prior to full arguments which will illuminate all the facts bearing on the issue of mootness.

circumstances" (Reply, p. 14).[3] What we distill from the Government's studied ambiguity concerning this "new general rule" is that, in the future, the Hearing Boards will weigh the security defendant's "position" against his "personal history" (Reply p. 13). If we surmise correctly, the Government is now saying that, although they still deem petitioner to be a *perjurious ex-Communist*, they are putting into effect an unexplained system whereby even such persons may at times have access to secret information on the basis of some equally unexplained comparison of "position and personal history."[4]

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[3] The Government states in its Reply that "the most curious facet of petitioner's Opposition is its total failure to refer to, or to discuss, the pointed suggestion in the Government's mootness memorandum . . . that the action taken in petitioner's case on December 31 was the result of a general reconsideration of one aspect of the Industrial Security Program . . ." (p. 4). Petitioner did, of course, notice that the Government had made a reference to the Acting Secretary's Memorandum of December 31 concerning "the level of clearance" as one of three factors which the Government took "the opportunity to note" (Memorandum p. 10); but since the Government did not appear to rely upon what it merely took "the opportunity to note," petitioner did not feel called upon to respond. The consideration of "level of clearance" in the Acting Secretary's Memorandum appeared to make little or no change in the program (see Testimony of Industrial Personnel Security Review Director Fenton before the Senate Subcommittee on Constitutional Rights, 84th Cong., 2d Sess., pursuant to S. Res. 94, pp. 606-607). Moreover, the so-called "pointed suggestion" is *not* the one the Government is now making, for instead of a "level of clearance" rule, the Government now suggests that the new factor in the program calls for consideration of the employee's "position and personal history" (Reply p. 13). At any rate, neither the original suggestion of "level of clearance" nor the present contention of "position and personal history" (Reply p. 13) substantially affect the "likelihood of recurrence" which is the touchstone of justiciability.

[4] We respectfully suggest, despite the Government's efforts to have this Court assume the contrary, that the Government's "new general rule" was in fact "Taylor-made." It was conceived, according to the Government, "when petitioner's case was brought to the attention of the Acting Secretary" (Reply p. 5); it was given a New Year's Eve premature birth the day petitioner was "cleared" shortly after this Court granted certiorari; it has yet to grow to the point where the Government can state the rule in sufficiently understandable terms to promulgate it.

Initially, we suggest that this Court is being asked to weigh "likelihood of recurrence", the touchstone of justiciability, in the light of a rule that has never been promulgated or even stated with understandable clarity. The only official basis for this "rule" is the Memorandum of December 31st from the Acting Secretary of Defense to the Assistant Secretary; but this Memorandum nowhere states what the Government now vaguely suggests the new policy to be (see n. 3, *supra*). And, while the Solicitor General suggests that the new rule now exists (Reply p. 5), the Department of Defense has supplied him with no Regulation, nor even any instructions to the field, placing the "rule" into effect.[5] Nothing that has yet been presented to this Court is sufficiently concrete to give the Court any assurance against likelihood of recurrence. Possibly by the week of March 23rd, the time now scheduled for oral arguments, the Government will have seen fit to promulgate its new rule in some understandable fashion to permit this Court's consideration of its impact upon the issue of mootness.

We believe that, if the "new rule" is removed from its present amorphous state and given body and substance, it will be found to increase rather than decrease the likelihood of petitioner's subjection to renewed proceedings under the unaltered no-confrontation system. Heretofore, a "secret" clearance was at least good for all secret work; now, it appears that the slightest change in work may upset security "clearance" based on a delicate balance of "position" and "personal history," particularly for one whom the Government holds to be a *perjurious* ex-Communist.[6]

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[5] It is strange, indeed, if in fact there has been a new general rule since December 31, 1958, that now, almost seven weeks later, no public Regulations or instructions to the field are sufficiently well advanced for the Solicitor General to be able to present them to this Court.

[6] For some unexplained reason, the Government's 24-page Memorandum never once refers to the fact that the Department, on October 13, 1958,

In petitioner's work at Bell Aircraft, the classified materials his job requires him to see are not fixed but changing; at any moment the tenuous balance of his "position and personal history" may shift without any initiative on his part. Furthermore, he may himself desire to obtain different work at Bell or elsewhere; but, unless the relief requested is obtained, petitioner is frozen in his present work, for any such change of position is likely under the new tenuous balance to bring down upon him another 2½ year tragedy.

Finally, even assuming that petitioner's work and personal history continues identical in every respect with present conditions—a most unwarranted assumption—the continuous clearance system which has resulted in multiple jeopardy for so many other security defendants (Opposition pp. 22-25) hardly renders unlikely renewed proceedings in the case of one deemed by the Defense Department to be a perjurious ex-Communist. Significantly enough, the Government expressly refuses (Reply n. 11, p. 14) to discuss petitioner's demonstration (Opposition pp. 22-25) that those once seriously charged under the no-confrontation security programs are never free of jeopardy.[7] The simple fact is that neither petitioner's last minute "clearance" nor the amorphous change in the standard of clearance protects him

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explicitly found petitioner guilty of perjury in denying past Communist affiliations. In its effort to minimize the Defense Department's repeated findings against petitioner (Reply n. 4, p. 6), the Government refers to everything except the fact that the Department of Defense had expressly found petitioner guilty of perjury. We respectfully suggest that it is not unlikely that the Government will find some way to proceed against one whom the Government asserts to be a perjurious ex-Communist, if this Court's process should fade into the distance.

[7] The Government asserts (Reply p. 15) that the petitioner is in no different position than thousands of others who have been accorded clearance under the program. On the contrary, petitioner's position is wholly different, for he has been found a perjurious ex-Communist and the Government still holds him to be such. The others were found innocent on the merits.

from the ever-present peril of the challenged "hearing" system which the Government continues to maintain in all its vigor.

* * * * * * *

Petitioner might have chosen to end this hastily prepared Memorandum here. But the Government's suggestion to this Court that petitioner has made a number of factual errors and assumptions (even though the Government concedes (Reply p. 2) that most of these "have no direct bearing on the legal problem of mootness"), demands an immediate, even if curtailed, response:

1. The Government suggests (Reply p. 2) that petitioner misread its initial Memorandum when he suggested that the Government had conceded that clearance proceedings might recur. The sentence on which petitioner based his statement appears on page 7 of the Government's initial Memorandum: "Here, on the other hand, the suit attacks, not merely some injurious conduct which may or may not recur, but a particular official administrative order . . ." Having reread the sentence in question, we think our interpretation was by no means unwarranted. In any event, the issue is not whether the Government had conceded a likelihood of recurrence, but whether, as we have demonstrated, there is in fact a likelihood of recurrence.

2. The Government, suggesting that petitioner misread the Defense Department's decision of October 13, 1958 finding petitioner a security risk for the second time, argues that "there are no findings . . . that petitioner lied when he said that he had never had a sympathetic interest in Communism . . ." (Reply p. 3). The Court's attention is invited to page 122 of the record where the Department informed Mr. Taylor that his "sworn reply" and his "testimony" "were deliberately and knowingly either false or

misleading" in denying that he had ever been a member of the Communist Party and that he had "no knowledge of the subversive aims and purposes of the Communist Party."

3. The Government suggests (Reply p. 3) that petitioner was wrong in assuming that the Defense Department rested its findings of October 13, 1958 on "acceptance of the information given by all 'six secret informants' . . ." While we do not understand what difference it makes whether the findings rested on one or on all six secret informants, we suggest that our conclusion was an appropriate inference from the fact that the Chairman of the Board, at the very last stages of the proceedings, on August 1, 1958, read the synopses of the statements of all six informants into the record (R. 102-104) as "information of an evidentiary nature" (R. 436) and rejected petitioner's motion "either to strike or to limit the use of the material" (R. 441).

4. The Government takes umbrage (Reply p. 4) at petitioner's suggestion that it was the filing of the petition for certiorari and the granting of that petition by this Court that caused the Government's action in petitioner's case. Even now, however, the Government does not deny petitioner's assertion that between October 13, 1958, when petitioner was for the second time finally denied clearance, and the date of the filing of the petition for certiorari, the matter was not under review.

5. The Government suggests (Reply pp. 9-13) that petitioner is wrong in indicating that the Secretary of Defense has violated his own Regulation in failing to make findings on the charges against petitioner and in failing to find his clearance "clearly consistent with the interests of the national security." We would have assumed that procedural regulations in general terms such as these would be no less applicable to the Secretary than to his subordinates. At any rate, petitioner did not cite the Secretary's failure to

comply with his own Regulation in order to invoke the *Service* rule. Rather petitioner cited the Secretary's failure to find petitioner's clearance consistent with the interests of security and, indeed, to make any findings whatever, to show that the Secretary had not cleared petitioner on the merits (which the Government now concedes) and to demonstrate that the Secretary's hurried action in violation of what were, at the very least, policies of his own Department, bespoke the direct relationship between this Court's grant of certiorari and the Secretary's effort, without altering the challenged hearing procedure, to avoid its review.

6. The Government states (Reply n. 12, p. 15) that its inquiry indicates that the new personnel security questionnaires required of petitioner were exclusively company-imposed by Bell. Counsel has rechecked with petitioner since receipt of the Government's reply and petitioner reaffirms his earlier statement to counsel that, upon balking at filling out new forms, the Bell official informed him that the "Government security people required it."

7. The Government suggests (Reply p. 19), in its discussion of this Court's decisions on the question of mootness,[8] that "petitioner attacks the principles of mootness which the Court has been applying to withdrawal of challenged

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[8] Of the ten cases cited by the Government (Reply p. 17), a number were wholly unopposed. The remainder have either been previously answered (see Opposition n. 6, 7, p. 16), or are newly cited but equally inapplicable decisions. For instance, the Government now cites *St. Pierre v. United States*, 319 U.S. 41. But that case was an appeal from a contempt conviction which had been served rather than an equity action falling within the *Trans-Missouri-Southern Pacific* doctrine. As the Government's *St. Pierre* brief in this Court (p. 10) itself explicitly recognized, cases such as *Trans-Missouri* and *Southern Pacific* "establish" that "where an injunction is sought a case can continue even though the defendant is not at the moment engaging in the activity sought to be enjoined; in such cases there is nothing to prevent him from resuming such conduct of his own volition. Such injunctions still have force and are operative as to a defendant's future conduct."

government orders as an unfair 'double standard' . . ." On the contrary, petitioner's Opposition flatly states (p. 14) that the *Government's* "suggestion of a 'double standard' of mootness was long ago expressly rejected by the Court . . ." The Government's efforts to make it appear as though petitioner were accusing this Court of applying a "double standard" misreads the clear sentence from petitioner's Opposition just quoted.

8. The Government suggests (Reply p. 22) that "petitioner did not ask, in his District Court complaint, for declaratory or injunctive relief with respect to the Defense Department's industrial security regulation itself . . ." But, even under the most technical rules of common law pleading, one would have thought that a prayer for injunctive and declaratory relief against an unfair hearing procedure denying confrontation was a request for relief against the Regulation promulgating that unfair procedure.

Conclusion

On the basis of still unrepudiated charges of Communism and perjury and by virtue of a wholly unfair "hearing" system, petitioner has suffered loss of means of livelihood and devastating security taint. Now, without repudiation of its charges, without removal of the taint, without revision of the hearing system whose validity the Government continues to assert,[9] it suggests that this Court is powerless to make petitioner whole for his past injuries or to safeguard

[9] The repentant discontinuance of *sub judice* practices has sometimes rendered unnecessary the granting of equitable relief against those practices; but this is the first instance where, without either repentance or discontinuance of challenged practices, it is urged that jurisdiction has been lost. The Court will, we hope, carefully note that no change whatever has even been suggested in the no-confrontation procedure which petitioner challenges; nor does the undefined change in the standard of clearance in any way reduce petitioner's jeopardy under the challenged hearing procedure.

him from the obvious likelihood of repeated subjection to the "hearing" system which his suit challenges. However anxious the Government may to be save that hearing system from judicial invalidation by giving petitioner a clearance without finding him either "innocent" or "secure", the Constitution does not empower the Government by such means to disarm this Court of its power to grant petitioner the full vidication and protection to which he is entitled.

It is respectfully submitted that respondents' suggestion of mootness be denied or, if the question of mootness be deemed worthy of further consideration, that its determination be deferred until after the Court has had the benefit of the oral arguments.

Respectfully submitted,

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February 17, 1959

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No. 504

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OCTOBER TERM, 1958

CHARLES ALLEN TAYLOR,

Petitioner,

v.

NEIL McELROY, A. TYLER PORT,

Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 504

CHARLES ALLEN TAYLOR,

Petitioner,

v.

NEIL McELROY, A. TYLER PORT,

Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONER

Opinion Below

The opinion and judgment of the District Court are not reported; they appear at pages 473-476 of the Record. No opinion or judgment has been rendered by the Court of Appeals (R. 479); the decision of the Court of Appeals in the related case of *Greene* v. *McElroy*, No. 180, is reported at 254 F. 2d 944.

Jurisdiction

Summary judgment was entered against petitioner by the United States District Court for the District of Columbia on October 14, 1958 (R. 475). Petitioner docketed his appeal in the Court of Appeals for the District of Columbia Circuit on October 16, 1958 (R. 477). The petition for a writ of certiorari before judgment in the Court of Appeals was filed in this Court on November 8, 1958; the petition was granted on December 15, 1958 and the case was assigned for argument immediately preceding No. 180 (R. 480). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented

1. Whether the federal courts are powerless to afford redress against the arbitrary denial of clearance for access to classified defense information based solely on accusations by faceless informants neither confronted by nor known to either petitioner or the Hearing Board, where such denial results in the termination of employment and the curtailment of means of livelihood.

2. Whether, if power to afford redress exists in the federal courts, it is consistent with statutory authority and the due process clause of the Fifth Amendment for the Government to deny clearance for access to classified information solely on the basis of accusations by faceless informants neither confronted by nor known to either petitioner or the Hearing Board.

Statutes and Regulations Involved

Paragraph 4 of the Industrial Personnel Security Review Regulation provides as follows: [1]

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[1] 20 Fed. Reg. 3, 32 CFR Part 67 (Supp. 1958), Section 67.1-4.

> "*Release of Information.* All personnel in the Program will comply with applicable directives pertaining to the safeguarding of classified information and the handling of investigative reports. No classified information, nor any information which might compromise investigative sources or methods or the identity of confidential informants, will be disclosed to any contractor or contractor employee, or to his lawyer or representatives, or to any other person not authorized to have access to such information . . ."

The statutes and Executive Order upon which the Government apparently relies as its authority for the Industrial Personnel Security Review Program and its no-confrontation hearing system are set forth in Appendix A (*infra*, p. 62).

Statement of Facts

Petitioner was employed from 1941 until 1956 as a tool maker at Bell Aircraft Corporation, Buffalo, New York (R. 2, 29-30). On September 6, 1956, without advance notice or intimation of any sort to petitioner, the Office of Industrial Personnel Security Review of the Defense Department dispatched a letter to the company suspending any and all clearances for access to classified defense information then held by petitioner (R. 34). Because of this suspension of clearance and since petitioner's work as a tool maker required access to classified defense information, petitioner was forthwith discharged by the company on September 11, 1956, and rendered unable to obtain employment sufficient for means of livelihood (R. 30, 33-34, 40-41).

Shortly after his discharge, petitioner received from the Office of Industrial Personnel Security Review of the Defense Department a "Statement of Reasons," dated

September 10, 1956, for the suspension of his clearance for access to classified defense information (R. 38). This 1956 Statement of Reasons charged that in 1942 and 1943 petitioner had been a member of, paid dues to, and held a membership card in, the Communist Party and "*may still have membership in the Communist Party*" (R. 38). Petitioner promptly entered a categorical sworn denial of the charge and submitted a "Notice to Produce" asking to be informed of the names and addresses of the persons upon whose information the charges in the Statement of Reasons were based and to inspect the original or a copy of the Communist Party membership card, as well as a Communist Party transfer card also referred to in the Statement of Reasons (R. 42, 49-50).

On November 1, 1956, petitioner appeared at a "hearing" before the Defense Department's New York Industrial Personnel Security Hearing Board to defend himself against the charge of Communist affiliation some 13 or 14 years earlier (R. 125). At the outset of the "hearing," the Board made clear that, in accordance with paragraph 4 of the governing Regulation (p. 3, *supra*), it would produce no evidence in support of the charge of Communist affiliation nor even inform petitioner of the names of his accusers (R. 18, 126-130). Although the Chairman of the Board admitted at the outset of the hearing that the Board did not have the alleged Communist Party membership card and Communist Party transfer card in its possession (R. 130) and although he refused to reveal who, if anybody, had possession of the alleged cards (R. 131), he nevertheless stressed the Board's "*intention . . . to consider that these documents exist*" (R. 131). Thereupon, notwithstanding the difficulty of proving the negative of facts presumed by the Board and particularly a negative concerning years long past, petitioner undertook and accom-

plished the task of showing the utter implausibility and falsity of the charge against him.

Petitioner, assuming the burden of proving his innocence, testified under oath that he had never been a member of, paid dues to, held a card in, or aided or abetted, the Communist Party in any manner (R. 353-413). He not only gave categorical sworn denials to the charge of Communism and each facet thereof, but he demonstrated his continuous public opposition to the Communist Party program and the Communist Party leaders in his local union both during the years in question and continuously thereafter (*ibid*). In particular, petitioner stressed his repeated 1942-1943 public statements opposing the firm Communist Party line on incentive pay and a complete no-strike pledge (R. 362-3, 386). Lengthy cross-examination by the Board and its counsel served only to reinforce petitioner's testimony (R. 369-405, 409-412).[2]

Eleven additional witnesses took the stand to demonstrate under oath that the charges were patently implausible and wholly false. Petitioner's son, Eugene Taylor, and ten employees of the Bell Aircraft Corporation, most of whom presently hold security clearances at Bell and all of whom have worked with and known petitioner during the fifteen years of his employment there, testified that petitioner had never discussed Communism or the Communist Party favorably; had no Communist books, literature or friends; and was regarded by witnesses and others active in the local UAW union as "an independent thinker, and . . . not a Com-

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[2] For example, the Board's repeated efforts to tie petitioner to the Communist Party by questioning him about a list of persons apparently known to the Board as Buffalo-area Communists only indicated anew petitioner's absence of Communist affiliation for he was totally unacquainted with these people (R. 373-378, 383, 395-397, 411-412). The Board's persistent, though futile, cross-examination of petitioner was especially ironic in view of its failure to make the secret informants available for any examination whatever.

munist. Now or ever" (R. 134-352, 178). In the words of one witness, Thomas Smith, "if Russia or any foreign country invaded this country, Taylor would be the first guy to get shot fighting them. That's the kind of guy he is, to me . . . He's a real, 100 per cent American" (R. 324).

These eleven witnesses not only proved petitioner's *non-Communism;* they also proved his *anti-Communism* during the very period that faceless informants allege his Party membership. The Communist Party leader of petitioner's local UAW union in 1942-1943 was Allie Brodose. John Maturski, who defeated Brodose for the presidency of the local in 1943 on an all-out anti-Communist platform, testified that petitioner stood with him publicly in opposition to Brodose and the Communist Party program urged by Brodose (R. 197-231). Joseph Rosmyslowski testified that petitioner had frequently been publicly opposed to, and had become generally known as a bitter enemy of, Brodose; indeed he recalled an angry argument between petitioner and Brodose in 1942 or 1943 in which petitioner repeatedly referred to Brodose as a "red" (R. 158-176, 174). Leon Meyers recalled an incident in 1942 or early in 1943 when petitioner had warned him about associating with Brodose because "you know he's a Commie" (R. 287-288). Petitioner's 1942-43 consistent public opposition to Brodose personally and to the Communist Party platform urged by Brodose, was related to the Board from personal observation by all ten of the Bell Aircraft employees who appeared in his behalf (R. 158-60, 167-176, 203-204, 217, 224-227, 237, 245, 257-260, 264-265, 281, 286-288, 291, 300, 304, 311-313, 320-323, 335-336, 338-339, 348-349, 350-351). At least seven of these witnesses particularly stressed petitioner's public statements against incentive pay and the no-strike pledge (both central to Communist policy of the day) as clear proof of his anti-Communism (R. 159-60, 174, 204-206, 217, 258, 300, 311-313, 320-322, 335-336).

After three days of "hearing" before the Industrial Personnel Security Hearing Board, there was not a word in the record to support the charge against petitioner, but, on the contrary, only the testimony of twelve witnesses on direct and cross-examination showing the patent falsity and implausibility of the charge against him. Yet, notwithstanding this sworn record, the Office of Industrial Personnel Security Review on June 14, 1957 found "*true as stated*" the charge that the petitioner had been a member of, paid dues to, and held a membership card in, the Communist Party during 1942-43 (R. 52). On the basis of this incredible finding, petitioner's security clearance was denied as "not clearly consistent with the interests of national security" (*ibid*).

On November 22, 1957, petitioner appealed to the Secretary of Defense (R. 53-57), referring in his appeal to petitioner's outspoken opposition to the Communist Party policies of Brodose and suggesting the possibility of his having been confused with Brodose's ally, one Alvin Taylor (R. 53-57). Five months having elasped without action by the Defense Department on his appeal to the Secretary, petitioner, on April 24, 1958, filed this suit for injunctive and declaratory relief in the United States District Court for the District of Columbia seeking a review of the denial of his clearance without confrontation by his accusers (R. 1). On May 30, 1958, more than six months after petitioner's appeal to the Secretary of Defense and only after the institution of this action, the General Counsel of the Defense Department advised petitioner by letter that the case was being returned to the Hearing Board for unspecified "further proceedings" (R. 59-60). In so doing, however, the Defense Department stated that the former adverse determination against petitioner, based on the statements of the secret informants, "*was neither arbitrary nor capricious but was, on the contrary, reasonably supported*" (R. 60).

On June 19, 1958, the Hearing Board transmitted an Amended Statement of Reasons to petitioner (R. 68). The charge contained in this Amended Statement was substantially identical with the former charge in that it asserted that petitioner had been a member of, paid dues to, and held a membership card in the Communist Party in 1942-43. But there was one very real difference—the new charge, instead of alleging that petitioner had and "*may still have membership in the Communist Party*" (R. 38), now alleged that he had been *expelled* from the Communist Party in 1943, primarily because he had "opposed the 'no strike pledge' and 'incentive pay' policies supported by the Communist Party" (R. 70).[3] In addition, the Amended Statement, in a civil administrative "indictment" for perjury, charged petitioner with false testimony at his 1956 hearing in denying former Communist Party affiliation (R. 72-74). Petitioner immediately denied the amended charge under oath (R. 80), and pointed out through his counsel that "Mr. Taylor is the first American to be judged by a tribunal which accuses the defendant upon secret accusations of being untruthful in his assertions of innocence" (R. 79).

Now at long last, after two years of waiting, it appeared that petitioner might be confronted by his accusers. A hearing was scheduled for July 11, 1958, and petitioner appeared with counsel ready to face his accusers only to be told by the Board that no decision had yet been reached

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[3] The Amended Statement of Reasons had thus been made to fit the facts at the "hearing" in November, 1956; what petitioner had presented as his affirmative defense was now worked into the case against him as the reason for his "expulsion" from the Communist Party, an expulsion never before even mentioned. Only later, when the synopses of the secret informants' accusations were read into the record (see p. 9, *infra*), did petitioner learn that the secret informants had suddenly "remembered" his expulsion from the Party, tailoring their stories to fit the facts at the 1956 hearing and that the Amended Statement simply flowed from the amended stories of the informants.

on whether to grant him confrontation (R. 89). The hearing was continued (R. 94).

On August 1 the hearing was reconvened once again (R. 434). This time the Board flatly announced that it was not going to confront petitioner with his accusers: instead the Chairman read into the record six anonymous synopses of accusations of Communist affiliation in 1942-43 (R. 434-440, 102-104). Although the original charges in 1956 (based on the original information from the secret informants) had alleged that petitioner "*may still have* membership in the Communist Party" (R. 38), five of the six confidential sources now referred to petitioner's 1943 *expulsion* from the Communist Party;[4] one of the informants, in words reminiscent of petitioner's defense at the 1956 "hearing," even cited his "public statements against incentive pay and in favor of a strike policy" as grounds for the expulsion (R. 102). The Board refused to indicate whether it had ever examined the confidential informants, what if anything it knew about their past criminal or other records, and what degree of hearsay was involved in the assertions of the informants (R. 104-117). It was quite clear from the synopses themselves, however, that *the Board itself was forced to rely solely on second-, third- and fourth-degree hearsay assertions against petitioner by persons the Board itself never examined and that petitioner's accusers are not federal agents secreted in the Communist Party but merely casual informants engaged in private slander.*[5]

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[4] Four of the sources actually used the word "expelled" or "expulsion" (R. 102-103) and a fifth source referred to petitioner's name being on a list "favorable to the Socialist Workers Party" (R. 104), which the Amended Statement of Reasons alleged as one basis of petitioner's expulsion from the Communist Party (R. 68).

[5] Examples of the second-, third- and fourth-degree hearsay assertions before the Board are readily available in these synopses. For instance, one of the confidential sources is said to have furnished information "in substance showing that in or about July 1944 he had seen a list of names in the possession of a member of the Buffalo branch, Socialist

Petitioner having been denied confrontation again and again, it was now apparent that his appeal to the Secretary of Defense had produced nothing but a fruitless nine-month delay of legal redress. Thereupon, on September 12, 1958, petitioner filed in the District Court a Motion for Summary Judgment to which respondents cross-moved. A few minutes before the October 14th argument in the District Court on these motions, counsel was informed that petitioner had once again, on October 13, 1958, been finally denied security clearance. On that date the Defense Department for the second time made a final administrative determination finding petitioner a security risk and deny-

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Workers Party, of persons favorable to the Socialist Workers Party . . . and that this list contained the name Charles Taylor" (R. 104). Thus the Board was permitted to draw inferences concerning the charge of petitioner's Communist Party membership from 1) an unknown person's preparation of a list of persons "favorable to the Socialist Workers Party" which was 2) seen by an unnamed informant in the possession of 3) yet another unknown person, all of which was told presumably 4) to a governmental agent and 5) ultimately transmitted to the Hearing Board.

Moreover the Board's refusal to answer the question whether it had itself examined the confidential informants (R. 106) can only be interpreted as an admission that the customary practice had been followed of withholding the names of the informants even from the Board, thus rendering impossible any examination of the informants by the Board (see p. 33, *infra*). The Government did not suggest the contrary in its Memorandum on the petition for certiorari.

Finally, the synopses also make clear that petitioner's accusers are not federal agents secreted in the Communist Party but merely casual informants. For example, the fourth confidential source was obviously a fellow worker at Bell (R. 103) and, to a greater or lesser degree, the synopses make quite clear that all the adverse information was derived from the "recollection" of private informants about events long past (R. 102-104). Furthermore, had the information concerning petitioner come from Government agents infiltrating the Communist Party while petitioner was allegedly a member, we cannot conceive of the Government's delaying security proceedings against him from 1942 or 1943 until 1956. Clearly, not undercover agents but merely casual informants are involved; one cannot believe that professional agents would first have reported that petitioner may still be a member of the Communist Party and then later have asserted his expulsion from the Party in 1943.

ing him access to secret information (R. 120-124). The Department found the basic charges of Communist affiliation "*true as stated*" and particularly found that petitioner had "deliberately and knowingly" made "false or misleading" denials of such Communist affiliation (R. 122-123). As a result of this latest administrative action of October 13th, the Government on the following day formally withdrew in District Court its prior contention that petitioner had failed to exhaust his administrative remedies (R. 459). The District Court, although "concerned about the administrative proceedings" (R. 473-474), entered summary judgment for the Government (R. 475).

On November 8, 1958, the petition for certiorari was filed. On December 8, 1958, less than two months after petitioner, on the basis of information from secret informants, had been finally determined to be a security risk and to have committed perjury in denying Communist Party affiliation, the Solicitor General informed this Court that the case was the subject of review "by the Departments of Defense and Justice." On December 15, 1958, this Court granted certiorari and assigned the case for argument immediately preceding *Greene* v. *McElroy*, No. 180 (R. 480).

On December 31, 1958, the Acting Secretary of Defense found that the "clearance of Charles Allen Taylor is in the *national interest*." As unusual as was this sudden and belated about-face, even more unprecedented was the failure of the Secretary to make the prescribed determination that petitioner's clearance was "clearly consistent with the interests of the *national security*" (Industrial Personnel Security Review Regulation, Section 20e) and his failure to issue findings on each of the charges against petitioner, notwithstanding the fact that the Department's own Regulation requires that all security determinations "shall include a finding with respect to each of the allegations

set forth in the Statement of Reasons" (Industrial Personnel Security Review Regulation, Section 20d).

On January 5, 1959, petitioner's attorney sent a telegram to the Secretary of Defense requesting the issuance of the required findings and specifically asking for findings (1) reversing all the earlier findings, (2) withdrawing the false charges, (3) announcing that Mr. Taylor had never been a member of the Communist Party, never paid Communist Party dues, never attended Communist Party meetings, etc., and (4) establishing that he has been truthful in so asserting.[6] The only response to this telegram was a letter of January 6, 1959, from the Department's General Counsel rejecting *sub silentio* petitioner's request for affirmative findings and merely stating that "The language of the order of December 31, 1958, which reads '. . . hereby superseding all previous orders in this case' completely expunges all previous findings in this case, as if they had never been rendered." Thereupon, on January 10, 1959, petitioner's attorney addressed another telegram to the Secretary of Defense referring to the "unresponsive" nature of the January 6th reply and again requesting the issuance of exculpatory findings that petitioner had never been a Communist Party member and that his denial of such membership had not been perjurious. No response has been received.

Meanwhile, on January 9, 1959, the Government filed its "Memorandum for the Respondents Suggesting That The Cause Is Moot." On January 28, 1959, petitioner filed his "Opposition" to this "Suggestion" and requested either that the Government's suggestion of mootness be denied or, if the question of mootness be deemed worthy of further consideration, that the determination be deferred

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[6] This telegram, and the subsequent correspondence referred to in this paragraph, are set forth in full in Appendix B to petitioner's "Opposition to Government's Suggestion of Mootness," p. 33.

until after the Court has had the benefit of the oral arguments. On February 13, 1959, the Government filed a further detailed Memorandum on the issue of mootness, but failed to address itself in any way to petitioner's suggestion that this issue requires at the very least full argument before the Court. As this brief is being filed, petitioner's request for a postponement or denial of the suggestion of mootness is pending before the Court.

Petitioner is now employed by Bell Aircraft under the cloud of two and a half years of grave charges and without the benefit of findings clearing him of those charges or repudiating the assertions of the six secret informants. Indeed, petitioner has already once more been required to fill out personnel security questionnaires, including questionnaires concerning past Communist affiliation, which are the first steps in the standard security clearance procedure to which petitioner is now apparently once more being subjected. Only the requested injunctive and declaratory relief can protect petitioner from a continuance of this endless story of what can happen to an American citizen once he is caught in the clutches of a security program predicated on the changing stories of faceless informants.

SUMMARY OF ARGUMENT

I

This Court has consistently held confrontation to be a minimum requirement of the procedural due process imposed on all governmental action affecting substantial interests. The Defense Department's Regulation barring confrontation affects substantial interests of petitioner and brings into play the safeguard of procedural due process under the Fifth Amendment. If the interest in public employment is sufficiently substantial to invoke due process protection (*Wieman* v. *Updegraff*, 344 U.S. 183,

192), certainly the interest in private employment is *a fortiori* sufficient. *Truax* v. *Raich*, 239 U.S. 33, 41. Where, as here, petitioner's job, his means of livelihood and his reputation are all at stake, governmental action must accord with procedural due process. Whatever rare and grudging exceptions to the requirement of due process this Court may have recognized in isolated decisions in the past, none of the interests involved in those cases rise to the dignity and substantiality of the interests here under consideration.

The fair hearing imposed whenever substantial interests are at stake by this universal concept of procedural due processes encompasses the opportunity to know, examine, explain and rebut all the contrary evidence. More particularly, such a hearing includes the unqualified right to be confronted with all adverse witnesses and to subject them to cross-examination. That right has been fully and consistently recognized by this Court in terms that permit no limitation. *Interstate Commerce Commission* v. *Louisville & Nashville R. Co.*, 227 U.S. 88, 93; *Morgan* v. *United States*, 304 U.S. 1, 18; *Carter* v. *Kubler*, 320 U.S. 243, 247; *In re Oliver*, 333 U.S. 257, 273.

This Court's uncompromising insistence on including confrontation and cross-examination within the basic core of the due process concept is grounded on something more substantial than metaphysical concepts of fairness and morality. Experience derived from every court and hearing room in the land has demonstrated that confrontation and cross-examination are indispensable weapons in the arsenal of procedural devices available to uncover the truth, the only legitimate goal of any proceeding. But confrontation and cross-examination are not due process elements solely for the benefit of the accused; rather they are "the best insurance for the Government itself against those blunders which leave lasting stains on a system of

justice but which are bound to occur on ex parte consideration." *Shaughnessy* v. *United States ex rel. Mezei*, 345 U.S. 206, 224-225 (dissenting opinion of Mr. Justice Jackson). This Court cannot, consistent with the constitutional tradition to which it has faithfully adhered, sanction the abandonment of standards of fair procedure in security programs involving millions of Americans.

II

The Government will, as in the past, seek to avoid the force of the arguments and precedents in Point I by contending for a selective standard of procedural due process based on balancing the conflicting individual and national interests involved. We suggest, however, that the Government is totally unwarranted in this facile transposition of the "balance of interests" principle from the area of substantive rights to that of procedural due process. The procedural guarantees incorporated in the Bill of Rights concededly impose restraints, often serious restraints, upon governmental action, but this Court has not yet seen fit for that reason to sanction their disregard.

In any event, it would avail the Government naught even were this Court to attempt a balancing of individual and national interests. Even accepting, for the sake of argument only, this novel standard of procedural due process, it is manifest, on the one hand, that denial of confrontation in security proceedings renders the hearings and determinations hopelessly arbitrary and unfair and, on the other hand, that denial of confrontation is not supported by any real interest in protecting the Government's undercover operations and personnel.

A

Without confrontation security hearings are inevitably unfair and wholly arbitrary. All the reasons for cross-

examination in other areas—to test memory, opportunity for and powers of observation, degree of certainty, veracity, motivation and character—are particularly applicable in the security area. (i) Security charges almost always relate to a period long past; unable to disprove ancient accusations because time has removed affirmative witnesses, the accused is rendered largely defenseless by denial of confrontation which would permit direct disproof of the charge. (ii) Security charges deal with covert and suspect activities; since the persons most likely to be in a position to give direct rebuttal to such charges are unwilling to do so at the price of confessing their own suspect affiliation, the absence of opportunity for direct disproof through cross-examination too often leaves the security defendant unable to demonstrate his innocence. (iii) The same incriminating involvement which precludes the accused from obtaining truly knowledgeable witnesses on his own behalf also renders suspect (and especially needful of cross-examination) many of those who provide the Government with secret accusations against security defendants; persons once themselves involved with Communism are particularly subject to suggestion or even coaching at the hands of those collecting information against security defendants. (iv) Moreover, the burden of proving innocence is cast upon the security defendant and virtually no degree of indirect refutation can successfully efface the allegations of informants who remain insulated from cross-examination. (v) Finally, what renders indirect rebuttal in security cases especially meaningless is the fact that those who make the ultimate security clearance determinations are themselves denied any opportunity to examine the accusers and fairly to evaluate the credibility of their accusations. The Hearing Board is no more able to make a rational weighing of the *known* record provided by the accused and his live witnesses against the untestable accusations of *unknown* informants

than a mathematician can make a rational sum from adding apples and pears.

In short, it would not be too much to suggest that in no other area of governmental action are the accusations of faceless informants as unreliable and the opportunity of indirect rebuttal of as little value as they are in the security field.

B

In view of the manifest unfairness inherent in the denial of confrontation in security proceedings, the Government would have an overwhelming burden to demonstrate a sufficient countervailing national interest to justify the existing system. Yet, instead of providing clear and cogent reasons in support of its no-confrontation policy, the Government seeks to obscure the weakness of its position by an *in terrorem* appeal in the name of "security."

Secret informants and confrontation have been effectively utilized by the Government side by side in criminal, civil and administrative proceedings for the entire period of our history. No reason is suggested why the Government cannot use secret informants in the security field, as it does in other areas, to provide leads for obtaining witnesses to testify on the open record before the accused and his judges. The constitutional requirement of confrontation in the security field has never worked for the simple reason that it has never been tried. The Government has never sought to utilize its secret informants as suppliers of leads for witnesses to testify on the open record because it has had no incentive to do so as long as it could make its case through the accusations of the secret informants themselves. Moreover, the Government has not even troubled to arm itself with a subpoena power by which it could exercise compulsion to bring in witnesses uncovered as a result of the leads supplied by the secret informants. Until the Government

makes a serious effort to comply with constitutional requirements by providing witnesses as it does in all other proceedings affecting substantial interests, it ought not be heard to say that it cannot do so.

Thus, confrontation and the anonymity of secret informants can undoubtedly go side by side in the vast majority of security cases. But, assuming that there may be particular instances in which the secret informants are unable to supply leads by which the Government can obtain its witnesses, no reason is suggested why the unmasking of the secret informants themselves would provide obstacles never found insuperable in other areas of law enforcement.

The vast preponderance of security cases are predicated upon statements by mere casual informants covering years long past rather than the information of professional FBI agents currently secreted inside the Communist Party. Petitioner's case is no different; all his accusers are casual informants and no conceivable security consideration warrants their insulation from cross-examination. Every official and quasi-official study of the subject has led to the conclusion that as concerns mere casual informants no legitimate governmental interest requires refusal of the right to their confrontation (see pp. 42 to 46, *infra*).

Even if petitioner's accusers had been in the category of professional FBI undercover agents, which they were not, no national interest would require a different rule than in the case of casual informants. There is no reason to believe that the Government would be unable in most instances to utilize its undercover FBI agents to obtain leads to live witnesses and thus avoid the necessity for unmasking the undercover agents. But if the agent should be unable in a particular case to supply such leads, there has been no showing that the testimony of the undercover agent himself would imperil law enforcement any more than it has done in other areas. Public testimony by professional

FBI agents in other types of security proceedings and declarations from high Government officials as to the success in penetrating the Communist Party indicate that any unmasked agent would be readily replaceable without damage to our national security.

III

This Court need not resolve the ultimate constitutional issue since Congress has never authorized the unfair hearing procedures prescribed by the contested regulation. Where, as here, a serious question as to the constitutionality of a federal statute is raised, this Court will first ascertain whether a construction of the statute is fairly possible by which the constitutional question may be avoided. This practice has been followed many times so as to avoid needless rulings on serious and substantial questions affecting various constitutional provisions, including those incorporating the guarantee of due process. *Japanese Immigrant Case (Yamataya* v. *Fisher)*, 189 U.S. 86, 100-101; *Anniston Mfg. Co.* v. *Davis*, 301 U.S. 337, 351-352; *American Power & Light Co.* v. *S.E.C.*, 329 U.S. 90, 108. And, in *Wong Yang Sung* v. *McGrath*, 339 U.S. 33, where there was "no express requirement for any hearing or adjudication in the statute authorizing deportation," this Court nevertheless read the requirement of a fair hearing into the statute because the Court "would hardly attribute to Congress a purpose to be less scrupulous about the fairness of a hearing necessitated by the Constitution than one granted by it as a matter of expediency."

Application of this rule of construction makes plain the conclusion that the statutory foundation of the Industrial Personnel Security Review Program, if indeed there is any such foundation whatever, must be interpreted to give the due process type of a fair hearing, including confrontation and cross-examination, to all affected individuals.

There is nothing in any of the underlying statutes relied upon by the Government which compels or even permits the Department of Defense to deny a full and fair hearing to employees of Government contractors.

IV

Petitioner's case presents a justiciable controversy which this Court should resolve. Nothing in the observations of the Court of Appeals in the *Greene* opinion that no justiciable controversy arises out of an attack on "the Secretary's decision on its merits" has any applicability to the instant case. Nor can the claim be honored that "standing to sue" is lacking to obtain redress against the Department's unfair hearing procedure because the security clearance which is predicated upon that procedure is a mere "privilege" which the Government may withhold at will. Vital rights of private employment, opportunity for means of livelihood and the honor and self-respect of the individual, all dependent upon the outcome of a security determination, are tangible interests fully sufficient to create a justiciable controversy with respect to the validity of the procedure upon which that determination is based. See, e.g., *Harmon* v. *Brucker*, 355 U.S. 579; *Slochower* v. *Board of Higher Education*, 350 U.S. 551; *Wieman* v. *Updegraff*, 344 U.S. 183.

ARGUMENT

I

This Court Has Consistently Held Confrontation to Be a Minimum Requirement of the Procedural Due Process Imposed on All Governmental Action Affecting Substantial Interests

No principle of our jurisprudence is more firmly embedded than the procedural due process guaranteed by the Fifth and Fourteenth Amendments. This Court has con-

sistently stressed "the high social and moral values inherent in the procedural safeguard of a fair hearing" based upon "considerations which go to the very ethos of the scheme of our society . . ." *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 167, 172 (concurring opinion of Mr. Justice Frankfurter). Because fairness of procedure is the hallmark of our democratic way of life and the indispensable essence of liberty, "procedural due process is more elemental and less flexible than substantive due process. It yields less to the times, varies less with conditions, and defers much less to legislative judgment." *Shaughnessy* v. *United States ex rel. Mezei*, 345 U.S. 206, 224 (dissenting opinion of Mr. Justice Jackson).

In its elemental sense, procedural due process assures the protection of those procedures which accord with "the rudiments of fair play," *Chicago M. & St. P. R. Co.* v. *Polt*, 232 U.S. 165, 168, and which maintain "the 'inexorable safeguard' of a fair and open hearing," *Ohio Bell Tel. Co.* v. *Public Utilities Comm.*, 301 U.S. 292, 304. By insisting upon "a fair hearing upon the fundamental facts," *Southern R. Co.* v. *Virginia*, 290 U.S. 190, 199, the procedural due process principle establishes a minimum standard of fairness for governmental action affecting the life, liberty or property of those within the reach of the Constitution.

The concept of procedural due process is universal in its nature and in its application whenever substantial interests are affected. Viewed either in a constitutional or nonconstitutional[7] setting, the concept ad-

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[7] This Court has consistently construed legislation, save where explicit language precluded such interpretation, in such a manner as to impose or observe procedural due process in its basic meaning. See *American Power & Light Co.* v. *S.E.C.*, 329 U.S. 90, 107-108. In a later section of this brief (Point III, *infra*, pp. 50 to 56), we demonstrate that this Court need not reach the constitutional issue involved because Congress has never authorized the unfair hearing procedure prescribed by the challenged Regulation.

mits of exclusions only in the narrowest and most exceptional situations.[8] It applies equally and in undiluted form both to criminal prosecutions (*In re Oliver*, 333 U.S. 257, 273) and to civil proceedings (*Coe* v. *Armour Fertilizer Works*, 237 U.S. 413). And the concept is applicable whether the interest being asserted is denominated a "right" or a "privilege."[9] By its inherent nature, fairness of procedure is the quintessence of a fair and respected government.

Certainly, the Defense Department's Regulation barring confrontation affects substantial interests of petitioner, thus bringing into play the safeguard of procedural due process under the Fifth Amendment. If the interest in public employment is sufficiently substantial to invoke due process protections (*Wieman* v. *Updegraff*, 344 U.S. 183, 192), certainly the interest in private employment is *a fortiori* sufficient. "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure." *Truax* v. *Raich*, 239 U.S. 33, 41. Where, as here, petitioner's job, his means of livelihood and his reputation are all at stake, governmental action must accord with procedural due process. Whatever rare and grudging exceptions to the requirement of due process this Court may have recognized in isolated decisions in the past, none

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[8] See discussion of these exceptions in the opinion of Mr. Justice Frankfurter, concurring in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 167-168.

[9] That procedural due process has never been thought applicable only to those asserting some constitutional or statutory "right" is evident from the decisions of this Court in *Slochower* v. *Board of Higher Education*, 350 U.S. 551, 556, and *Wieman* v. *Updegraff*, 344 U.S. 183, 192, where interference with the "privilege" of public employment was held permissible only to the extent that due process was observed. See also *Speiser* v. *Randall*, 357 U.S. 513; *Hannegan* v. *Esquire, Inc.*, 327 U.S. 146, 156.

of the interests involved in those cases rise to the dignity and substantiality of the interest here under consideration.

The fair hearing imposed whenever substantial interests are at stake by this universal concept of procedural due process "must be a real one, not a sham or a pretense." *Palko* v. *Connecticut*, 302 U.S. 319, 327. It is not enough that a hearing be provided only to the extent deemed fair or advisable by those in charge or that some but not all of the elements of such a hearing be made available. A fair hearing by definition includes all that "is necessary for the protection of the parties" so as to "give them an opportunity to be heard respecting the justice of the judgment sought." *Hagar* v. *Reclamation District*, 111 U.S. 701, 708.

Obviously, then, something more is required than a notice of a hearing and an opportunity to present evidence on one's own behalf. Necessarily encompassed by a *fair* hearing is the opportunity to know, examine, explain and rebut all the contrary evidence. More particularly, such a hearing includes the unqualified right to be confronted with all adverse witnesses and to subject them to cross-examination. That right has been fully and consistently recognized by this Court in terms that permit no limitation. As was held nearly a half century ago in *Interstate Commerce Commission* v. *Louisville & Nashville R. Co.*, 227 U.S. 88, 93:

> ". . . manifestly there is no hearing when the party does not know what evidence is offered or considered, and is not given an opportunity to test, explain, or refute . . . All parties must be fully apprised of the evidence submitted or to be considered, and must be given an opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense."

Time and again this Court has pointed out that the opportunity to know, to be confronted with and to rebut all the adverse testimony, lies at the very heart of a fair hearing. Thus in *Morgan* v. *United States*, 304 U.S. 1, 18, the Court ruled: "The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one." In *Carter* v. *Kubler*, 320 U.S. 243, 247, it is reiterated that "The basic elements of such a [fair and full] hearing include the right of each party to be apprized of all the evidence upon which a factual adjudication rests, plus the right to examine, explain or rebut all such evidence." Or, as put even more recently in *In re Oliver*, 333 U.S. 257, 273: "A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense—a right to his day in court—are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel." Accord: *In re Murchison*, 349 U.S. 133, 134; *Reilly* v. *Pinkus*, 338 U.S. 269, 276; *Motes* v. *United States*, 178 U.S. 458, 474; *Ohio Bell Tel. Co.* v. *Public Utilities Comm.*, 301 U.S. 292, 300.

This Court's uncompromising insistence on including confrontation and cross-examination within the basic core of the due process concept is grounded on something more substantial than metaphysical concepts of fairness and morality. Experience derived from every court and hearing room in the land has demonstrated that confrontation and cross-examination are indispensable weapons in the arsenal of procedural devices available to uncover the truth, the only legitimate goal of any proceeding. No other or better means has ever been found to minimize the mistakes, the untruths and the distortions to which

humans are often prone. Only by face-to-face questioning of the accuser concerning his accusations can his demeanor, his memory, his opportunity for observation, his veracity, his motivation, and the basis of his charge be subjected to rational analysis and the truth revealed. Without the opportunity of cross-examining the source of an accusation, the credibility of his charge remains unprovable and the decisional process cannot then reflect selection of the true and rejection of the false, the human mind being unable to weigh the known against the unknown.

Indeed, the very thought that a man may be condemned, branded or denied some right or privilege on the basis of secret, undisclosed information is abhorrent to free men. It cannot be that what the Founding Fathers required for the most petty criminal transgression should be unavailable to one involved in a far more significant proceeding on the outcome of which depends his job, his means of livelihood and, indeed, his very name. Secrecy, it has been said, "provides a cloak for the malevolent, the misinformed, the meddlesome, and the corrupt to play the role of informer undetected and uncorrected." *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 551 (dissenting opinion of Mr. Justice Jackson). It deprives the accused person of protection against his enemies, "whose evidence may consist of nothing more than malice, vindictiveness, mistaken identity, intolerance, prejudice, or a perverted desire to destroy." [10]

But confrontation and cross-examination are not due process elements solely for the benefit of the accused. The full utilization of those elements "is the best insurance for the Government itself against those blunders which leave lasting stains on a system of justice but which are bound

[10] Address of Harry P. Cain, former Senator and former member of the Subversive Activities Control Board, before the New York Civil Liberties Union, New York City, Feb. 22, 1956.

to occur on ex parte consideration." *Shaughnessy* v. *United States ex rel. Mezei*, 345 U.S. 206, 224-225 (dissenting opinion of Mr. Justice Jackson). In the words of Mr. Justice Frankfurter, concurring in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 172, no techniques better than confrontation and cross-examination have been found "for generating the feeling, so important to a popular government, that justice has been done." And it ill serves the great interests of the Government to rely upon a system that denies to it the assurance that the true facts have been adequately exposed. The probabilities of confidential information being either baseless or false are sufficiently great to warn against reliance thereon by any government truly sensitive to the advancement of the national interest whether in security or in other public concerns.

For these various reasons—the discovery of truth, the protection of the accused from mistake or malice, and the advancement of the legitimate interests of the Government—this Court has recognized that a hearing is not fair without the opportunity for confrontation and cross-examination. That recognition constitutes a respect for the elementary rights of men in a democratic society. By insisting that our democratic Government practice fairness, this Court has made the due process principle serve as a vehicle for the quest of truth and the protection of all interests concerned. This Court cannot, consistent with the constitutional tradition to which it has faithfully adhered, sanction the abandonment of the foregoing standards of fair procedure in security programs involving millions of Americans. We respectfully submit that established principles and precedents in the area of procedural due process validate petitioner's contention that the no-confrontation Regulation is invalid and that his prayer for injunctive and declaratory relief must be granted.

II

Security Hearings Without Confrontation Are at Once Inevitably Unfair and Wholly Unjustified by Any Tangible Governmental Interest

The authorities reviewed in the preceding section are dispositive of the question before the Court. The right to confront one's accusers, a right denied by the Defense Department Regulation in issue, has been too often held an indispensable attribute of the constitutionally required fairness of governmental proceedings to permit its abandonment here. Denial of security clearance cannot be predicated upon hearings in which the accused never faces and tests the damning "evidence."

We are confident that the precedents of this Court cited in Point I leave no doubt that a proceeding in which petitioner's job, livelihood and reputation are all at stake must accord the minimal due process requirement of confrontation; nor do we believe that the Constitution leaves room for a dilution of this principle in the name of some national interest, real or fancied. But we are, of course, aware of the more selective standard of procedural due process which was presented to this Court by the Solicitor General in *Bailey* v. *Richardson*, 341 U.S. 918: "The harm to the individual must be weighed against the harm to the public. The problem is one of 'balancing the conflicting individual and national interests involved'..." (Brief, p. 76). The same position was adopted in the Government's brief (p. 61) in *Peters* v. *Hobby*, 349 U.S. 331, and no doubt the Solicitor General will again urge this diluted standard of due process upon the Court. We suggest, however, that the Government is totally unwarranted in this facile transposition of the "balance of interests" principle from the area of substantive rights (see, e.g., *American Communications Ass'n.* v.

Douds, 339 U.S. 382, 410; *Watkins* v. *United States*, 354 U.S. 178, 198; *NAACP* v. *Alabama*, 357 U.S. 449), to that of procedural due process. The procedural guarantees incorporated in the Bill of Rights concededly impose restraints, often serious restraints, upon governmental action; but this Court has not yet seen fit for that reason to sanction their disregard. We cannot believe this Court will now sanction the variable standard of procedural due process proposed by the Government. Where, as here, substantial interests are affected, the requirements of procedural due process, including confrontation, are not subject to disregard because of some real or fanciful governmental need. The Government's suggestion that it is only bound by procedural requirements when they do not inhibit vital governmental action would open the gates to abandonment of due process safeguards in the very areas of tension where they are most needed.[11]

In any event, it would avail the Government naught even were this Court to attempt a balancing of individual and national interests. Even accepting, for the sake of argument only, this selective application of procedural due process, it is manifest, on the one hand, that denial of confrontation in security proceedings renders the hearings and determinations hopelessly arbitrary and unfair and, on the other hand, that denial of confrontation is not supported by any real interest in protecting the Government's undercover operations and personnel. We turn now to demonstrate that, on a weighing of the individual and governmental interests involved, all criteria inexorably militate towards adherence to the constitutional tradition of fair hearing.

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[11] If the Government's present contention—that the right of procedural due process gives way before other national interests—should be accepted, the door will be open to the dilution of every procedural guarantee in the Bill of Rights. What more reason, one may ask, is there for disregarding procedural due process, including confrontation, under the Fifth Amendment, than there is to dilute the right to confrontation under the Sixth Amendment?

A. *Without Confrontation Security Hearings and Determinations Are Inevitably Unfair and Wholly Arbitrary*

Very real and practical considerations have caused this Court to hold confrontation an indispensable attribute of a fair hearing. Only by interrogation of the accuser can his memory, his opportunity for and powers of observation, his degree of certainty, his veracity, his motivation, and his character be subjected to analysis. Without cross-examination, mistake, confusion, misrecollection, conjecture, opinion, irresponsible hearsay, coaching, or even malice, will necessarily go undetected. All these considerations are particularly applicable in the area of security clearance. By their very nature, security clearance determinations without opportunity for cross-examination of the accusers are necessarily unfair and arbitrary.

(i) *Lapse of time.* Security charges almost always relate to a period of time long past. Petitioner's own burden of disproving in 1956 a charge relating to the years 1942-1943 is by no means unusual.[12] In the absence of a "statute of limitations", indirect rebuttal of security accusations is rendered especially difficult simply by the passage of time and the consequent obliteration of pertinent evidence and available witnesses. The security defendant finds it most difficult to locate contemporaneous witnesses, and if located, to evoke their recollection as to years long past; he finds additional obstruction in the reluctance of otherwise sympathetic persons to risk "taint" by assistance to a "sus-

[12] Since the security programs are aimed primarily at weeding out persons "sympathetic" to Communism and since the bulk of the persons in the United States who have ever had anything to do with Communism, the Communist Party, or Communist-front organizations did so at a time long past when such associations were not yet generally deemed wrongful, it is in the very nature of the security program that it deals largely with ancient associations. See, e.g., Brown, *Loyalty and Security* (1958), p. 491, table 6.

pect." Unable to disprove ancient accusations by his own affirmative witnesses, the accused is rendered largely defenseless by denial of confrontation which would permit direct disproof of the charge.[13]

(ii) *Nature of charges.* Security charges deal with covert and suspect activities. Far from being matters of public record or public knowledge upon which collaterally disprobative evidence might readily be produced, the usual charge is that of membership or affiliation with some subversive or suspect organization or individual [14]—precisely the kind of charge on which it is most difficult to obtain willing witnesses to the security defendant's innocence. Thus petitioner had no hope of producing the 1942-43 Communist Party members in the Buffalo area who could have testified that he was not a member or an affiliate of the Party during those years.[15] Not only would such persons likely invoke

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[13] The fact that security charges almost always relate to a period of time long past adds an additional danger in the absence of confrontation—the danger of a mistake in identity. Actually, in petitioner's case, it was not only his own view but that of one of the witnesses on his behalf that he had been confused with Alvin Taylor, a notorious associate of Allie Brodose, to whom the basic charge against petitioner obviously did apply (R. 54, 238, 249). *Cf.* Bontecou, *The Federal Loyalty-Security Program* (1953), p. 83.

[14] "The great majority of cases calling for investigation have come under the provisions concerning membership in, affiliation with, or sympathetic association with the various groups identified with the Communist Party and designated by the Attorney General as subversive organizations." Richardson, *The Federal Employee Loyalty Program*, 51 Col. L. Rev. 546, 547. While Mr. Richardson was here referring to the Government's program for its own employees rather than the Government's program for industrial employees, all considerations relating to the nature of charges, types of secret informants, investigative reports and need for confrontation, are substantially identical for the two programs.

[15] Actually, petitioner's counsel did make valiant efforts to produce knowledgeable, Buffalo-area Communists from the relevant period, but his efforts proved wholly futile. Petitioner's counsel told the Board that one key witness "wouldn't so much as speak to me," that another was "deported," and that efforts to communicate with two others amounted only to a waste of time (R. 414-415).

their constitutional privilege against incrimination if called, but there is not even available a subpoena power by which petitioner might have brought them to his "hearing." Since the persons most likely to be in a position to give direct rebuttal to the charges are unwilling to do so at the price of confessing their own suspect affiliation, the absence of opportunity for direct disproof through cross-examination too often leaves the security defendant unable to demonstrate his innocence.

(iii) *Danger of false accusation.* The same incriminating involvement which precludes the accused from obtaining truly knowledgeable witnesses on his own behalf also renders suspect (and especially needful of cross-examination) many of those who provide the Government with the secret accusations against security defendants. "The danger is, that when a man is fixed, and knows that his own guilt is detected, he purchases impunity by falsely accusing others." *Regina* v. *Farler*, 8 Car. & P. 106, 108 (Lord Abinger, 1837). Thus the accusations against petitioner apparently emanate (through how many hearsay steps nobody knows) from persons who were themselves in some way involved with Communism. Such persons are particularly subject to suggestion or even coaching at the hands of those collecting information against security defendants.[16] Thus petitioner's own case indicates a very real

[16] For examples of "security informants" who have subsequently confessed their own falsehoods or whose falsehoods have been publicly confessed by the Government, this Court need not go beyond its own records. There is no knowing how many times Harvey Matusow, Paul Crouch, Manning Johnson and Joseph Mazzei were used as secret informants in security cases before the concession of their untruthfulness was made in this Court. See *Mesarosh* v. *United States*, 352 U.S. 1; *Communist Party* v. *Subversive Activities Control Board*, 351 U.S. 115.

Other evidence is readily available. A report of the Joint Congressional Committee on Atomic Energy cites a case in which exceptionally damaging charges withered completely under oath and examination. The Committee said that this:

likelihood of such suggestion or coaching. In the 1956 Statement of Reasons petitioner was charged with Communist Party membership during 1942-43 and the secret informants' statements before the Board at that time indicated that he "may still have membership in the Communist Party" (R. 38). At the 1956 "hearing," a principal affirmative defense for petitioner was that in 1942-43 he had opposed the Communist Party policies of Allie Brodose on incentive pay and the no-strike pledge. In 1958, the secret informants suddenly recalled petitioner's 1943 "expulsion" from the Party on the very grounds he had given as his defense (R. 102-104), an expulsion which had never even been suggested by any accuser up to that time. Instead of affording petitioner an opportunity to impeach his accusers by cross-examination, the Government's role appears to have been one of leading the secret informants in an effort to rationalize the irreconcilable conflict at the 1956 "hearing." Nothing could show more clearly the need for confrontation to prevent false, self-serving or induced accusations from wrongfully placing guilt upon defenseless citizens.

". . . serves as a warning that an informant may perhaps give the FBI highly unfavorable advice but, when placed under oath before a local board, deny all that he had said, admit that he knows little or nothing about the employee, and admit further that he bore him a grudge." S. Rep. No. 1169, 81st Cong., 1st Sess., 59, 68.

There is nothing uncommon in such incidents. This Court is familiar with the case of Harvey Matusow who says he lied 245 times when he testified against alleged Communists. The records are replete with other examples. See Bontecou, *Due Process in Security Dismissals*, 300 The Annals 102; Yarmolinsky, *Case Studies in Personnel Security* (1955); *Brief for American Civil Liberties as Amicus Curiae, Greene* v. *United States*, No. 180. In the words of Mr. Justice Jackson when he was still Attorney General, "Investigative reports include leads and suspicions, and sometimes even the statements of *malicious* or misinformed *people*" (quoted in Barth, *How Good Is an FBI Report*, Harpers, March, 1954, in which the author fully documents the case for an adverse answer to the question he poses.)

(iv) *Burden of proof.* Moreover, in the absence of confrontation and the opportunity for direct disproof of the Government's charges, virtually no amount of indirect rebuttal will meet the security defendant's overwhelming burden of proving his innocence. Unlike ordinary criminal and administrative proceedings, in security hearings the burden is not on the Government but on the accused. Under the applicable Regulation it is not the withholding of a clearance which must be determined to be in the national interest, but rather the *granting* of clearance which must be found *"clearly consistent with the interests of the national security"* (Industrial Personnel Security Review Regulation, par. 12, 20e). Every security defendant finds it necessary not merely to cast reasonable doubt upon the faceless accusations against him, but he must show them to be so utterly groundless that no slightest doubt remains in the minds of his judges—a well-nigh insuperable burden of proof while there is no opportunity to cross-examine the accusers.

Thus, although ten fellow employees at Bell in 1942-43 testified under oath to corroborate the fact that in these very years petitioner was a prominent anti-Communist in his local union—in open opposition both to the Communist Party leadership and the Party's program—the Hearing Board twice found in favor of petitioner's unknown accusers. So grave are security charges, and so onerous the burden of defense, that virtually no degree of indirect refutation can successfully efface the allegations of informants who remain insulated from cross-examination.

(v) *Informants hidden from Hearing Boards.* Finally, what renders indirect rebuttal in security cases especially meaningless is the fact that those who make the ultimate security clearance determinations *are themselves denied any opportunity to examine the accusers and fairly to evaluate the credibility of their accusations.* The lack of

Hearing Board access to the accusers, fully illustrated in petitioner's case (see n. 5, pp. 9-10, *supra*), is not the exception but the rule. The Director of the FBI and of the Industrial Personnel Security Program have testified that the identities (name, occupation, activities, and other identifying information) of confidential informants remain in the files of the FBI, preventing those who must make security determinations from examining the informants and evaluating their trustworthiness, motivation and reliability. Testifying before a Subcommittee of the Senate Committee on Foreign Relations ("State Department Employee Loyalty Investigation" hearings, 81st Cong., 2d Sess.), FBI Director J. Edgar Hoover gave the following explanation of the relationship between FBI reports and the federal agencies (at pp. 327-28):

> "After the investigation is completed, when indicated by Department procedure or judgment, a summary of the facts developed is furnished to the Department of Justice or United States attorneys. In other types of investigations, the reports of special agents are submitted to the interested agency of the Government. Details and information dealing with administrative operations and confidential sources of information remain in our files."

And Director Hoover reiterated that:

> "The report as you see it in the Bureau, the working file or the raw file, will contain the identity of all informants, the source of the information, and the method by which it was received. The report is then digested, and transmitted to the Civil Service Commission with administrative details and confidential sources remaining in our files. . .
>
> Senator HICKENLOOPER. . . As you stated a moment

ago, I believe that you either symbolize or give reference by number to the source of information on the part of those people who do not like to have their names disclosed.

Mr. HOOVER. That is correct, and when we submit that report to the Civil Service Commission in the loyalty cases it is a summary of the investigation by the Bureau. . . no confidential reports of the Bureau have ever been made available to anybody" (pp. 330-31).[17]

Industrial Personnel Security Director Jerome D. Fenton, testifying in 1955 hearings on "Security and Constitutional Rights" before a Subcommittee of the Senate Judiciary Committee (84th Cong., 2d Sess.), likewise conceded that those who make the security clearance determinations are denied opportunity to examine accusers (at p. 624):

"Mr. HOCKER. Can you tell me what type of help is given to the hearing board in these reports with respect to the matter of evaluation? What is the nature of the evaluation that is used for this purpose?

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[17] It is hard to conjure up any possible justification for requiring the Board to act upon summaries of FBI investigations instead of the original reports. The governing Regulation (par. 11) requires that every member of the Board must have a Top Secret security clearance, the highest clearance available. No doubt the provision of mere summaries to the "security-cleared" members of the Board serves to remove inconsistencies and confusion that would otherwise appear from the reports, but it hardly assists the Boards in evaluating the reliability of the informants' accusations.

Just as there is no possible justification for denying the security-cleared Boards the original FBI reports, so there is no justification for refusing the Boards an opportunity to examine the informants themselves. It is difficult to understand why other governmental departments have not provided this minimal safeguard adopted by the Atomic Energy Commission which permits Hearing Board interrogation of accusers. Atomic Energy Commission Regulation Sec. 4.27(m), 21 Fed. Reg. 3103, 3107, (May 9, 1956), states when open confrontation of a witness is not advisable the Hearing Board may require the witness "to testify privately and be subject to thorough questioning by the Board and its Counsel."

Mr. FENTON. Well, each board has a person who is called a security adviser, who is an expert in that particular area. Each screening board has one, and those individuals are well-trained people who know how to evaluate reports and evaluate information. They know how to separate the wheat from the chaff, and they assist these boards.

Mr. HOCKER. *This expert, then, has to take the report and make his own determination in assisting the board as to the reliability of a witness that he has never seen, or perhaps hasn't even had the opportunity to see the person who interviewed the witness?*

Mr. FENTON. *Well, he has nothing to do with the witness; no.*

Mr. HOCKER. *What is that?*

Mr. FENTON. *He has not interviewed the witness; no*" (emphasis supplied).[18]

In short, the Hearing Board regularly has before it no more than summarized versions of statements by accusers whose very identities remain unknown to the Board. Forced to "weigh" the testimony of the defendant and his witnesses against mere summarized versions of statements by unknown informants, the Hearing Board is in no position to make "findings of fact." The Board can no more make a rational weighing of the ***known*** record provided by the accused and his live witnesses against the untestable accusations of ***unknown*** informants than a mathematician can make a rational sum from adding apples and pears. Precisely because the Board can have no basis for weighing the known against the unknown, there is a very real risk that the

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[18] In like vein Seth W. Richardson, former Chairman of the Loyalty Review Board and Subversive Activities Control Board, also emphasized the unavailability to the boards themselves of the informants and even their identities since the FBI "will not disclose to anyone" informants, "whose names are known only to the FBI." Richardson, *The Federal Employee Loyalty Program*, 51 Col. L. Rev. 546, 549, 550.

Board will accept the unknown simply because it comes from a governmental source.[19]

Thus, as against petitioner's twelve live and known witnesses, the Board had to "weigh" the accusations of persons whose identity, credibility and basis of information were unknown to the Board. In fact, the record demonstrates that in most instances the charges were based upon no more than second-, third-, and fourth-degree hearsay on the part of the accusers themselves (see n. 5, *supra*).[20] The repeated "finding" that petitioner had been a Communist Party member was not a finding of that fact, but only of the admitted fact that persons unknown to the Hearing Board reported that other persons accused petitioner of such membership—whether upon the basis of mistake, confusion, misrecollection, conjecture, opinion, hearsay, malice or any other ground, all remaining unknown to the Board. Petitioner's proof could not rationally be weighed against

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[19] The danger that the Board will accept the unknown simply because it appears in a governmental document is quite real. See, e.g., Yarmolinsky, *Case Studies in Personnel Security*, p. 7 (1955). Indeed, in petitioner's case, the Chairman of the Board, referring to petitioner's alleged Communist Party membership and transfer cards, which the Board admittedly did not have before it (R. 130), stated at the very outset of the hearing: "At this time it is our intention, and the statement of reasons would indicate, to consider that these documents exist" (R. 131).

[20] What makes likely the acceptance not only of all degrees of hearsay but also of totally groundless accusations by dubious informants is the fact that the Board may unknowingly accept the statement of a totally unreliable individual. Thus, as FBI Director Hoover has testified, no matter how improbable or flimsy, an accusation made to an FBI agent must be included in his report and in turn passed on *without evaluation* to the Hearing Board. Testimony of J. Edgar Hoover, *Department of State, Justice, Commerce and the Judiciary Appropriations for 1951*, Senate, 81st Cong., 2d Sess. (1950), p. 130; see also S. Rep. 1169, 81st Cong., 1st Sess., p. 68. While the Board thus receives every baseless charge, the deletion of information concerning the informant which takes place during the process of summarization may deny it the information necessary to reveal that very baselessness. Director Fenton appropriately warned of the difficulty "in evaluating information whose source must be veiled so carefully." First Annual Report of the Industrial Personnel Security Review Program, p. 8.

the accusations of the Government's unknown informants to produce anything except haphazard conjecture.

In sum, the considerations which render confrontation indispensable to a fair hearing in other areas are doubly applicable to the security programs. In no other area are the accusations of faceless informants as unreliable and the opportunity of indirect rebuttal of as little value. The inevitable injustices which have resulted over the past decade from the denial of confrontation in these security programs provide living proof that unfair processes produce arbitrary results. See, also, cases cited in *Brief for the American Civil Liberties Union as Americus Curiae* in *Greene* v. *United States*, No. 180. But what makes these injustices all the more intolerable is the absence of any genuine Governmental justification for the denial of the traditional procedural safeguards.

B. *No Governmental Interest Is Served by Denial of Confrontation in Security Proceedings*

In view of this demonstration of the manifest unfairness inherent in denial of confrontation in security proceedings, the Government would have an overwhelming burden to demonstrate a sufficient countervailing national interest to justify the existing system. Yet, instead of providing clear and cogent reasons in support of its no-confrontation policy, the Government seeks to obscure the weakness of its position by an *in terrorem* appeal in the name of "security." We cannot believe that this Court will accept the Government's security *ipse dixit* here any more than it would accept unsupported governmental claims in any other field where the Bill of Rights is involved.[21]

The claim that the "security" of Government undercover

[21] The Government will likely formulate its justification of the no-confrontation policy in terms of the necessity for safeguarding classified defense information or military secrets. But such a formulation obscures rather than clarifies, for the constitutionally-required disclosure is not of

operations would be imperilled by observance of due process confrontation requirements, is groundless. Secret informants and confrontation have been effectively utilized by the Government side by side in criminal, civil and administrative proceedings for the entire period of our history; secret informants and confrontation can be effectively utilized side by side in today's security programs. No reason is suggested why the Government cannot use secret informants in the security field, as it does in other areas, to provide leads for obtaining witnesses to testify on the open record before the accused and his judges. Even in criminal cases, where the fewest possible individuals are parties or witnesses to the crime, the Government has been able to produce the necessary witnesses in open court. All the more readily could its secret informants in the security field provide leads to the numerous persons who necessarily observed the challenged associations and activities on which security charges are regularly predicated.

Thus, in petitioner's case, if it were in fact true that he attended meetings of the Communist Party in Buffalo in the years 1942-1943, when the Party there was large enough to help elect its own man President of the Bell local union, it is incredible that the Government's secret informants could not have provided leads to a single person anywhere in the United States who would deem it his duty to come before the Hearing Board and tell of petitioner's prior activities. Precisely because the Government was able to use its secret informants against petitioner with-

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defense secrets but simply of the identities of informants upon which the Board proposes to rely in reaching its conclusion. Petitioner does not contend that due process requires the disclosure of defense secrets to him; he does contend that he may not be denied access to such classified information and thereby deprived of his job, livelihood and good name, without the disclosure to him of the names of the informants and the opportunity to examine them. If any balancing of interests in this area is justified, which we deny (see pp. 27 to 28, *supra*), the balance is not between defense secrets and confrontation but between the anonymity of informants and confrontation.

out their confrontation, it had no incentive to utilize its informants in their historic role as providers of leads for witnesses who would testify openly. What we have in the security programs today is a system based on *administrative convenience* rather than *security necessity*.

The constitutional requirement of confrontation in the security field has never worked, for the simple reason that it has never been tried. When confrontation was seriously considered in 1947 at the inception of the loyalty-security programs, it was quite clear that those charged with the responsibility for their operation accepted the need for confrontation; it was only the strong objection of the Federal Bureau of Investigation that any confrontation would "hinder" and "impede" its investigative work that caused the reluctant institution of the no-confrontation system. See statement of Seth W. Richardson, Chairman, Loyalty Review Board, December 27, 1947, Appendix B, p. 64, *infra*. The Government has never sought to utilize its secret informants as suppliers of leads for witnesses to testify on the open record. It has never done so, we have already shown, because it has had no incentive to do so as long as it could make its case through the accusations of the secret informants themselves. Moreover, the Government has not even troubled to arm itself with a subpoena power by which it could exercise compulsion to bring in witnesses uncovered as a result of the leads supplied by the secret informants. Until the Government makes a serious effort to comply with constitutional requirements by providing witnesses, as it does in all other proceedings affecting substantial interests, it ought not be heard to say that it cannot do so.

What has been said concerning the utilization of informants to obtain leads for witnesses, particularly if the Government at long last arms itself with the subpoena power, leaves no doubt that confrontation and the anonymity of

informants could go side by side in the vast majority of security cases without imperilling any national interest. But, assuming that there may be particular instances in which the secret informants are unable to supply leads by which the Government can obtain its witnesses, no reason is suggested why the unmasking of the secret informants themselves would provide obstacles never found insuperable in other areas of law enforcement. While up to this point the considerations involving the proper utilization of informants have applied equally to all types of informants, the question of unmasking requires a differentiation between the so-called casual informants, on the one hand, and professional FBI agents continuing in undercover activities on the other. While we do not believe that occasional disclosure of identity in either category would adversely affect national security, we review the cases separately for the convenience of the Court.

1. *Unmasking of Casual Informants*

The vast preponderance of security cases are predicated upon statements by mere casual informants covering years long past rather than the information of professional FBI agents currently secreted inside the Communist Party.[22]

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[22] Seth W. Richardson, former Chairman of the Loyalty Review Board and the Subversive Activities Control Board, emphasized that merely casual informants are involved in the "overwhelming majority of cases":

". . . confidential informants are members of the public who will give information to the FBI only under a strict seal of confidence, their reasons being the obvious ones of the ordinary citizen who refuses to get involved in a public controversy. A further source might be fellow employees or business associates who, unless given complete anonymity, would not under any circumstances disclose their knowledge to the FBI. Numerous comparable informants might be referred to, and in *the overwhelming majority of cases*, the material facts with reference to derogatory items come from such confidential sources." Richardson, *The Federal Employee Loyalty Program*, 51 Col. L. Rev. 546, 550 (emphasis supplied).

Petitioner's case is no different, for all of his accusers are casual informants (see *supra*, n. 5, pp. 9-10). As to these persons, no conceivable security consideration warrants their insulation from cross-examination; yet the Defense Department Regulation against confrontation makes no distinction between such casual informants, the disclosure of whose identity in no sense impairs undercover activities, and those professional agents continuing to serve in an undercover capacity. The issue before the Court is only as to casual informants, shielded from confrontation by the indiscriminate provisions of the Regulation at issue.

There is substantial agreement among responsible experts that the indiscriminate no-confrontation policy of the security programs is unjustified by any legitimate secrecy considerations. *Every responsible study of the subject has led to the conclusion that as concerns mere casual informants no legitimate governmental interest requires refusal of the right to their confrontation.*

That is the conclusion of the bipartisan "Commission on Government Security" established by Act of Congress (Public Law 304, 84th Congress; 69 Stat. 595) to study the Government's security programs with a view, among other considerations, to the establishment of an industrial security program "which will protect the national security and preserve basic American rights." This Commission—under the chairmanship of Mr. Lloyd Wright and whose members included Senators Cotton and Stennis, and Representatives William M. McCulloch and Francis H. Walter—was unanimous in its 1957 recommendation on the subject of confrontation in the security programs. The Commission pointed out (at p. xviii) that those whose livelihood and reputation may be affected by security investigations are "entitled to fair hearings and to decisions which are neither capricious nor arbitrary." While recommending against confrontation which would expose the Government's

"counterintelligence operations and personnel," it was the explicit recommendation of the Commission that

> *"where loyalty charges are involved, no derogatory information, except that supplied by a regularly established confidential informant engaged in intelligence work for the Government whose identity may not be disclosed without compromising the national security shall be considered over the objection of the individual involved unless such individual is given the opportunity to cross-examine under oath the person supplying such derogatory information."* [23]

A similar judgment comes from the late General William J. Donovan, wartime head of the Office of Strategic Services, who states in his study (Donovan and Jones, *Program for a Democratic Counter Attack To Communist Penetration of Government Service*, 58 Yale L.J. 1211, 1235):

> "Certainly in practice much more could be disclosed to the employees than is currently disclosed. There seems no reason why the anonymous informant who is not in the regular employ of the FBI and whose testimony is relied on by the Board should not be revealed to the employee. It seems reasonable also that the Board should have the right to subpoena these informants. If non-confidential informants do not want to stand up and be counted, then their information should be used only as possible leads and not be made the basis of a record which cannot be refuted."

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[23] And see Report at pp. 669-71. Even as concerns the undercover agent as distinguished from the casual informant the Commission recommends confrontation "where the head of the investigative agency is of the opinion that his identity may be disclosed" (at p. 669). *Cf.* Coast Guard Regulations with respect to port security amended on April 27, 1956, after the decision in *Parker* v. *Lester*, 227 F. 2d 708 (C.A. 9, 1955) to require that "every effort shall be made to produce material witnesses . . . in order that such witnesses may be confronted and cross-examined by the applicant or holder." 33 CFR, § 125.43(f).

In like vein, former Solicitor General Philip B. Perlman, who in 1951 had argued against confrontation before this Court in the *Bailey* case, testified before a Senate Committee four years later that "mistakes were made in the administration of the loyalty program, and the way opened for abuses, the extent of which are now becoming apparent" and then pointed out that:

> "The right of confrontation of accusers, and the right of cross-examination, have been so generally breached under the security programs that there is a serious question as to whether the resulting injustice to suspected persons and the weakening of safeguards upon which all free citizens are accustomed to rely are necessary to promote the national security.
>
> The accused employees and even hearing boards are not informed as to whether it is actually necessary to withhold the identity of accusers for actual security reasons, or whether, as must be the situation in some cases, the informers prefer to remain secret in order better to perpetrate an injustice.
>
> The Government, I assume, would not deliberately protect such people, but its officials do not seem to have any choice." [24]

Similarly, after voluminous hearings on the "Administration of the Federal Employees' Security Program" (84th Cong., 2d Sess., S. Rep. 2750), the Johnston Committee, a Subcommittee of the Senate Committee on Post Office and Civil Service, recommended in its report that Congress enact new legislation replacing all existing loyalty-security programs, which would specify "*the instances when, and only when, unidentified informers and witnesses may be used*

[24] Hearings Before a Subcommittee of the Committee on Post Office and Civil Service, 84th Cong., 1st Sess., on "Administration of the Federal Employees' Security Program," p. 110.

in hearings against Federal employees" and embodying a requirement "*that confrontation must be made except as the Congress shall delineate*" (p. 547).

A recent study echoing the conclusions of these official sources is that of the Committee of the Association of the Bar of the City of New York on *The Federal Loyalty-Security Program* (1956). The Committee recommends that (pp. 174-5):

> "4. The identity of an informant who regularly provides or is employed to provide secret information should not be disclosed by requiring his appearance before a screening board or a hearing board or otherwise identifying him, whenever the head of the department or agency which obtained such information shall certify that the identification or presence of such an informant would be detrimental to the interests of national security. To the extent practicable and consistent with the interests of national security, certificates should be accompanied by data which would aid the board in evaluating the evidence given by the informant, including a statement of whether he obtained the information at first hand or through hearsay.
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> 5. As to all other witnesses, including casual informants, and with due consideration of the national security and fairness to the employee
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> (a) the screening board should determine whether it desires a witness to appear before it for interview, and
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> (b) the hearing board should determine whether the witness should be produced for cross-examination, or whether because of special circumstances he should be interrogated by the board without the employee being present, or whether his evidence should be given to the board in other ways, such

as by an affidavit or a signed statement. So far as consistent with the requirements of national security, a hearing board should make available to the employee the substance of all evidence it takes into consideration which was given by any witness whom the employee has not been permitted to cross-examine."

The Committee emphasized that (p. 178):

"The certificate procedure should not be used to excuse informants, even though regular agents, if their identity has been widely disclosed in other proceedings; the certificate procedure should be limited *to agents who are undercover and will continue to remain undercover*" (emphasis supplied).

The unanimity of these official and quasi-official statements, emanating as they do from persons who could by no means be deemed unsympathetic to the Government's security needs, is impressive demonstration both of the grave injustices which have resulted from the lack of confrontation and the absence of "security" justification for its indiscriminate denial. Nor could any reasonable observer conclude otherwise. To suggest that casual informants will not give their information to the Government unless their anonymity is guaranteed is at once to impugn both their patriotism and their veracity. We respectfully submit that the fabric of democracy, which is the ultimate security of our nation, will be better served by an end of talebearing by those unwilling to stand up and be counted. In the words of the Court of Appeals for the Ninth Circuit, "it may well be that in the long run nothing but beneficial results will come from a lessening of such talebearing." *Parker* v. *Lester*, 227 F. 2d 708, 720 (C.A. 9, 1955).

2. *Unmasking of Professional Undercover Agents*

Petitioner could well rest with the discussion and authorities in the preceding section, for, as already indicated, petitioner's faceless accusers are merely casual informants, not professional FBI agents operating inside the Communist Party. But we respectfully submit that, even if petitioner's accusers had been persons in the latter category, no national interest would require a different rule than in the case of the casual informants.

While the official and quasi-official observers of the security programs have not unexpectedly been reluctant to go beyond casual informants in their urging of confrontation (see pp. 42 to 46, *supra*), those observers of the security programs who have taken full account of the grave injustices resulting from the absence of confrontation and who have considered constitutional as well as security implications have regularly supported a return to the traditional requirements of fair hearing without regard to the nature of the informant. The responsible private authorities who have emphasized the absolute indispensability of confrontation to fair hearing in security cases without distinction as to the nature of the informant include Professor Ralph Brown (*Loyalty and Security*, 1958, pp. 394-97); Miss Eleanor Bontecou (*The Federal Loyalty-Security Program*, 1953, pp. 246-48); former Attorney General Francis Biddle (*The Fear of Freedom*, p. 215); the late Professor Zechariah Chafee, Jr. (*35 Years With Freedom of Speech*, pp. 26-27); Professor Walter Gellhorn (*Security, Loyalty and Science*, pp. 207-8); The American Jewish Congress (*Report of the Commission on Government Security*, 1957, p. 662); former Senator and member of Subversive Activities Control Board Harry P. Cain (*Address Before New York Civil Liberties Union*, New York City, February 22, 1956); and Professor Paul Klemperer

(*Hearings, n. 24, supra*, p. 373).[25] We respectfully submit that the cited commentators and students have reached the only possible conclusion permitted by the Constitution or required by national security.

As we have already seen, there is no reason to believe that the Government would be unable in most instances to utilize its undercover FBI agents to obtain leads to live witnesses and thus avoid the necessity for unmasking the undercover agents. But if the undercover agent should be unable in a particular case to supply such leads, there has been no showing that the testimony of the undercover agent himself would imperil law enforcement any more than it has done in other areas. Thus public testimony by professional FBI undercover agents has readily been given in criminal cases under the Smith Act (see e.g., *Dennis* v. *United States*, 341 U.S. 494) and in administrative proceedings involving the Communist Party (see *Communist Party* v. *Subversive Activities Control Board*, 351 U.S. 115). Apparently such unmasking of the undercover agents has not embarrassed the Government, for it freely boasts that the FBI has "penetrated the inner circle of the Communist Party with undercover informants. The success of the FBI in this regard has been so outstanding that the Communist Party in this country doesn't know which of its Communist members to trust" (Attorney General Brownell, April 9, 1954). It would not appear an unfair conclusion from declarations

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[25] Thus, Mr. John Lord O'Brian, in his 1955 Harvard Godkin Lectures, "National Security and Individual Freedom," states that "the excuse put forward . . . that disclosure of the identity of secret witnesses would hamper the prosecution in obtaining evidence" is "always the justification of the police" (p. 37). Reviewing precedents that reach back 2,000 years to Festus and King Agrippa and to the younger Pliny and Emperor Trajan, Mr. O'Brian concluded: "These historic statements throw into sharp relief some of the practices to which our government officials have recently been resorting. At the same time they may help to restore something of our own traditional perspective and sanity of outlook" (pp. 61-63).

on high such as these that an undercover agent inside the Communist Party would be readily replaceable without damage to our national security. No more than in the case of the casual informant will the occasional unmasking of an FBI undercover agent disarm this nation's defenses.[26]

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Grave as is the external and internal threat to this nation, we have not yet so far abandoned our 170-year constitutional tradition of governmental fairness as to permit the wholesale substitution of secret character assassination for the fair hearing heretofore required in governmental proceedings. Under this Court's binding precedents (see Point I) and even on a "balance" of the individual and governmental interests here involved (Point II), the Regulation denying confrontation clearly violates the due process guarantee of the Fifth Amendment.

But the constitutional issue need not be reached by this Court. For, as we show below (Point III), Congress has never authorized a departure from fundamental constitutional requirements in the Industrial Personnel Secu-

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[26] At times defenders of the no-confrontation hearing system have conjured up the hypothetical case of an FBI undercover informant high in the councils of the Communist Party obtaining information that a Communist espionage agent is presently employed with access to vital secrets; the Government, they say, ought not be forced to choose between the unmasking of its informant and the retention of the espionage agent in so sensitive a position. No such case, of course, has ever been brought to the light of day. See n. 32, p. 60, *infra*. We respectfully suggest, however, that if such a factual situation were ever to arise, standard counterespionage methods and ultimate criminal trial would inevitably preclude the operation of security programs. *It is patently absurd to suggest that after learning the identity of a spy, the Government would operate in the amateurish and clumsy fashion of moving to revoke his clearance.* At any rate, we have yet to hear any plausible reason why, if such a bizarre case ever were to arise, the Hearing Board, cleared for Top Secret, should be deprived of the opportunity to cross-examine the informant *in camera*.

rity Program; the no-confrontation Regulation presently in issue falls for lack of the necessary statutory foundation.

III

This Court Need Not Resolve the Ultimate Constitutional Issue Since Congress Has Never Authorized the Unfair Hearing Procedure Prescribed by the Contested Regulation

A fundamental tenet of this Court's role in the process of constitutional development is that grave constitutional issues are to be decided only when they inescapably present themselves for adjudication. A necessary corollary of that principle is that, where a serious question as to the constitutionality of a federal statute is raised, the Court will first ascertain whether a construction of the statute is fairly possible by which the constitutional question may be avoided. If the express language of Congress does not compel the opposite result, this Court will select the interpretation that is consistent with the relevant provision of the Constitution and that accordingly avoids constitutional adjudication. See, e.g., *United States* v. *Rumely*, 345 U.S. 41.

This practice has been followed many times so as to avoid needless rulings on serious and substantial questions affecting various constitutional provisions, including those incorporating the guarantee of due process. Thus in the *Japanese Immigrant Case* (*Yamataya* v. *Fisher*), 189 U.S. 86, 100-101, this Court said:

> "But this court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in 'due process of law' as under-

stood at the time of the adoption of the Constitution. One of these principles is that no person shall be deprived of his liberty without opportunity, at some time, to be heard, before such officers, in respect of the matters upon which that liberty depends. . . .

"This is the reasonable construction of the acts of Congress here in question, and they need not be otherwise interpreted. In the case of all acts of Congress, such interpretation ought to be adopted as, without doing violence to the import of the words used, will bring them into harmony with the Constitution. An act of Congress must be taken to be constitutional unless the contrary plainly and palpably appears. The words here used do not require an interpretation that would invest executive or administrative officers with the absolute, arbitrary power implied in the contention of the appellant."

And in *Anniston Mfg. Co.* v. *Davis*, 301 U.S. 337, 351-352, it was reiterated that:

"We apply the familiar canon which makes it our duty, of two possible constructions, to adopt the one which will save and not destroy. We cannot attribute to Congress an intent to defy the Fifth Amendment or 'even to come so near to doing so as to raise a serious question of constitutional law.' "

This same concept has been spelled out more recently in *American Power & Light Co.* v. *S.E.C.*, 329 U.S. 90, 108:

"Wherever possible, statutes must be interpreted in accordance with constitutional principles. Here, in the absence of definite contrary indications, it is fair to assume that Congress desired that §11(b)(2) be lawfully executed by giving appropriate notice and opportunity

for hearing to all those constitutionally entitled thereto. . . ."

See also: *American Communications Assn.* v. *Douds*, 339 U.S. 382, 407; *Ex parte Endo*, 323 U.S. 283, 299; *Cox* v. *New Hampshire*, 312 U.S. 569, 575; *Knights Templars' and M. Life Indem. Co.* v. *Jarman*, 187 U.S. 197, 205.

The fact that a particular statute does not in terms require a hearing as to an accused does not make irrelevant the foregoing canon of construction. To the extent that the Constitution may be said to require such a hearing, the statute will be read as imposing that constitutional requirement so long as the statutory language does not expressly forbid such a reading. An example of this interpretative process is to be found in *Wong Yang Sung* v. *McGrath*, 339 U.S. 33, where there was "no express requirement for any hearing or adjudication in the statute authorizing deportation." The Court nevertheless held (pp. 49-50) that:

> ". . . the difficulty with any argument premised on the proposition that the deportation statute does not require a hearing, is that without such hearing there would be no constitutional authority for deportation. The constitutional requirement of procedural due process of law derives from the same source as Congress' power to legislate and, where applicable, permeates every valid enactment of that body. . . . We would hardly attribute to Congress a purpose to be less scrupulous about the fairness of a hearing necessitated by the Constitution than one granted by it as a matter of expediency.
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> "Indeed, to so construe the Immigration Act might again bring it into constitutional jeopardy. When the Constitution requires a hearing, it requires a fair one,

one before a tribunal which meets at least currently prevailing standards of impartiality. . . ."

Application of this rule of construction makes plain the conclusion that the statutory foundation of the Industrial Personnel Security Review Program must be interpreted to give the due process type of a fair hearing, including confrontation and cross-examination, to all affected individuals. There is nothing in any of the underlying statutes relied upon by the Government which compels or even permits the Department of Defense to deny a full and fair hearing to employees of Government contractors.[27]

Thus the Armed Services Procurement Act of 1947, 62 Stat. 21, 41 U.S.C. § 151 (41 U.S.C. (1952 ed.) 151(c) (12), 153(a), later recodified with minor changes as 10 U.S.C. (Supp. V) 2304(a) (12), 2306(a)), provides in Section 4(a) that contracts to be negotiated "may be of any type which in the opinion of the agency head will promote the best interests of the government. . ." Not one syllable in that provision even hints that the agency head may negotiate a contract with a supplier of goods that incorporates a security hearing procedure for the contractor's employees inconsistent with elemental principles of due process. In fact, the promotion of "the best interests of the government," prescribed in this section, can appropriately be interpreted to mean that every aspect of the contract must

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[27] There is even grave doubt whether any sufficient basis, express or implied, exists in the enactments of Congress for the promulgation and operation of the entire Industrial Personnel Security Program. That question has been fully discussed in petitioner's brief in the *Greene* case (pp. 52 to 58) and we respectfully submit that there is no statutory foundation for the program itself. *Kent* v. *Dulles*, 357 U.S. 116. But, even if the Government should prevail in this Court in demonstrating statutory authorization or ratification of the Industrial Personnel Security Program in its general application, it cannot possibly be said that Congress has authorized so much of the program as abolishes traditional fair hearing guarantees.

be consistent with the pertinent portions of the Constitution. It need hardly be added that the promotion of the immutable principles of the Fifth Amendment is a part of the promotion of the best interests of the government.

It also has been said that the authority for the Industrial Personnel Security Review Program is Rev. Stat. § 161, 5 U.S.C. §22, which states:

> "The head of each department is authorized to prescribe regulations, *not inconsistent with law*, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it" (emphasis supplied).

But if the Regulation establishing the Industrial Security Program were promulgated under this law on the premise that it is necessary to the performance of the business of the Defense Department or to the proper preservation of the records, papers and property appertaining to it, the Regulation must avoid being "inconsistent with law." And a material part of the "law" referred to here by Congress must be taken to include the "law" of the Constitution and more particularly that of the Fifth Amendment and its requirement of a fair hearing with opportunity for confrontation and cross-examination.

Nor can a Congressional intent to authorize procedures inconsistent with the Fifth Amendment be read into the generalities of the National Security Act of 1947, 61 Stat. 499, 5 U.S.C. § 171, which created the Department of Defense and granted the Secretary of Defense and the three military Secretaries the authority to administer their departments. The same may be said of 18 U.S.C. §§ 793 and 798, making it illegal for any person having defense or classified information to disclose the same to unauthorized persons or

with intent to injure the United States. Violation of these criminal code provisions, indeed, calls for a trial with all the procedural safeguards guaranteed by the Constitution, including confrontation and cross-examination. Accordingly, if it be contended that these criminal statutes express the Congressional intent to establish an Industrial Personnel Security Review Program, they would also establish the intent that this program embody all the procedural safeguards found in the Criminal Code, including confrontation.

The conclusion is inescapable that there is nothing in the language of Congress, either express or implied, which gives the Defense Department even a shadow of purported authorization for a hearing procedure which departs from the Fifth Amendment norm. There is no provision of law which permits any suggestion that Congress intended to defy the Fifth Amendment or even to come so near thereto as to raise a serious question of constitutional law. On the contrary, expressed indications point to the desire of Congress that the Defense Department regulations shall not be inconsistent with law and shall affirmatively promote the best interests of the Government. Those indications, slight though they be, are more than enough to compel an interpretation of the power to issue the Regulation here involved only in a manner consistent with the constitutional guarantees of fair hearing.

The fact that there is no express requirement for any hearing or adjudication in any of the statutes dealing with the promulgation of Defense Department regulations does not make the impact of the foregoing interpretative process any less potent. The teaching of this Court's decision in *Wong Yang Sung* v. *McGrath*, 339 U.S. 33, is that the absence of an express Congressional requirement for a hearing makes the command of due process no less effective. Here the principles of due process demand that any hearing

conducted under the auspices of the Government comport with the elementary principles of fairness. That is true whether the hearing be expressly or only impliedly traceable to Congressional language.

To read into the authorization of the Industrial Personnel Security Review Program the concept of procedural due process is merely to recognize that "there cannot exist under the American flag any governmental authority untrammeled by the requirement of due process of law as guaranteed by the Constitution of the United States." *Mora* v. *Mejias*, 206 F. 2d 377, 382 (C.A. 1). By that interpolative process all serious questions of constitutional law are avoided and full effect is accorded to the petitioner's right to a due process hearing affording opportunity for confrontation and cross-examination.

Thus, while petitioner believes he has fully demonstrated that the denial of confrontation under the Defense Department Regulation violates his constitutional right to a fair hearing (see Points I, II), it becomes unnecessary for this Court to resolve that serious constitutional question since the statutory authorization for the Regulation can be interpreted so as to avoid it. On that basis, the challenged Regulation should be struck down as unauthorized by Congress.[28]

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[28] In its Brief in Opposition in the *Greene* case, the Government suggests (p. 14) that "the general power to safeguard military secrets is necessarily inherent in the duty of the executive department to preserve the security of the nation." It is not clear whether this language about safeguarding military secrets is intended to suggest that the executive department would have power to operate the Industrial Security Review Program, involving the right to private employment by millions of Americans, in the absence of Congressional authorization. At any rate, it seems clear that the executive department has no such power in the absence of Congressional action. *Youngstown Sheet and Tube Co.* v. *Sawyer*, 343 U.S. 579.

IV

Petitioner's Case Presents a Justiciable Controversy Which This Court Should Resolve

Petitioner's suit seeks declaratory and injunctive relief against the no-confrontation hearing procedure prescribed by the pertinent Defense Department Regulation. As petitioner pointed out in his "Opposition to Government's Suggestion of Mootness," the controversy over that procedure has not been mooted by his recent clearance since he remains subject to the continuing surveillance and operation of the security program and to the very real likelihood of renewed proceedings under the Department's unaltered "hearing" system.

Nor do the observations of the Court of Appeals in the *Greene* opinion that no justiciable controversy arises out of an attack on "the Secretary's decision on its merits" have any applicability to the instant case. The Court of Appeals there found that it could not "examine the merits of Greene's claim that he is trustworthy" and stated that "for a Court to hear de novo the evidence as to Greene's fitness to be assigned to a particular kind of confidential work would be a bootless task, involving judgments remote from the experience and competence of the judiciary." Whatever degree of applicability these observations by the Court might have had to the relief sought by Mr. Greene in his suit, they certainly have no bearing on the instant case wherein petitioner has never asked for a judicial determination of his "fitness to be assigned" to confidential work or on the "merits" of his security reliability. Whether or not these are executive determinations that courts cannot make, petitioner has in any case never asked the courts to make them.

Nor can the claim be honored that "standing to sue"

is lacking to obtain redress against the Department's unfair hearing procedure because the security clearance which is predicated upon that procedure is a mere "privilege" which the Government may withhold at will. To treat denial of clearance as involving merely denial of access to Government secrets rather than denial of the very means of livelihood is to indulge in sheer fiction. As the Court of Appeals itself observed in the *Greene* case, "as a practical matter" denial of clearance means dismissal from employment. "Security risk" is a badge of infamy to the employee which invariably produces devastating results. The Chairman of the Loyalty Review Board himself conceded that once found disloyal, "*a man is ruined everywhere and forever. No responsible employer would be likely to take a chance in giving him a job.*"[29] In like vein, the Director of the Office of Industrial Personnel Security Review has testified to the deep and devastating impact of "security risk" taint upon the future of the individual involved.[30] Thus petitioner, a highly skilled tool maker, was rendered completely unable to hold a job in his craft or indeed in any other line of work by the gratuitous badge of infamy imposed upon him under the Industrial Security Program (R. 33-34).

The Constitution is not blind to the private consequences of governmental action. *Cf. NAACP* v. *Alabama*, 357 U.S. 449; *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123. Vital rights of private employment, opportunity for means of livelihood and the honor and self-respect of the individual are involved in the constitutional and statutory validity of the Defense Department's unfair

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[29] "How Loyalty Program Looks to Its Boss," *Washington Star*, July 20, 1950.

[30] See Hearings on "Security and Constitutional Rights" before a Subcommittee of the Committee on the Judiciary, United States Senate, 84th Cong., 2d Sess., p. 628.

"hearing" procedure. These are tangible interests sufficient to create a justiciable controversy with respect to the validity of that procedure. See, e.g., *Harmon* v. *Brucker*, 355 U.S. 579; *Service* v. *Dulles*, 354 U.S. 363; *Schware* v. *Board of Bar Examiners*, 353 U.S. 232; *Cole* v. *Young*, 351 U.S. 536; *Slochower* v. *Board of Higher Education*, 350 U.S. 551; *Peters* v. *Hobby*, 349 U.S. 331; *Wieman* v. *Updegraff*, 344 U.S. 183; *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123; *Meyer* v. *Nebraska*, 262 U.S. 390, 399; *Truax* v. *Raich*, 239 U.S. 33; *Allgeyer* v. *Louisiana*, 165 U.S. 578; *Cummings* v. *Missouri*, 71 U.S. 277.

Conclusion

Even more than regard for substantive freedoms, the Constitution reflects the fundamental concern of the founders, a concern bred from bitter experience with tyranny, that governmental action be preceded by and arise only out of fair procedures. Adjudication on the basis of secret and untestable accusations has traditionally been regarded as antithetical to procedural fairness; confrontation has been found an indispensable attribute of fair result not only in the criminal process but wherever interests of liberty, property or repute are in jeopardy. President Dwight D. Eisenhower has given characteristic expression to this fundamental concern in his description of Wild Bill Hickok's "Abilene code":

> "It was: meet anyone face to face with whom you disagree. You could not sneak up on him from behind, or do any damage to him, without suffering the penalty of an outraged citizenry. If you met him face to face and took the same risks he did, you could get away with almost anything, as long as the bullet was in the front.
>
> "And today, although none of you has the great

fortune, I think, of being from Abilene, Kansas, you live after all by that same code, in your ideals and in the respect you give to certain qualities. In this country, if someone dislikes you, or accuses you, he must come up in front. He cannot hide behind the shadow. He cannot assassinate you or your character from behind, without suffering the penalties an outraged citizenry will impose." [31]

Unfortunately, as a result of fear of foreign infiltration and because of American inexperience with security problems, this nation's security programs have put a premium upon secret evidence—character assassination "from behind." They have adopted indiscriminate policies against confrontation unjustified by real or supposed security considerations.[32] As a result, millions of American citizens are today subject to a system based on secret character assassination without opportunity to defend and at the peril of a life of ruin and degradation. Estimates of the number of persons subject to the security programs have varied from 8 million (Warren, "The Law and the Future,"

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[31] Remarks on receiving America's Democratic Legacy Award on the occasion of the 40th Anniversary of the Anti-Defamation League, Press Release of November 23, 1953.

[32] It is worthy of note that the security programs do not appear to have any genuine relationship to security. Of the countless persons accused and discharged under the programs, as far as the public record is concerned, not a single one was a spy, saboteur, enemy agent or contemporaneous Communist Party member. See summaries at pp. 90-164 of the Report (No. 2750) of the Subcommittee of the Committee on Post Office and Civil Service (Johnston Committee) of the United States Senate, 84th Cong., 2d Sess., on "Administration of the Federal Employees' Security Program." On April 5, 1950, Seth Richardson, Chairman of the Loyalty Review Board, testified before a Senate Subcommittee that "not one single case of espionage" had been encountered during the three years of the loyalty program, and that the FBI had found no evidence even "directing toward espionage" in the course of its 10,000 full field investigations and its examination of three million personnel records. *N. Y. Times*, April 6, 1950, p. 1, col. 5.

Fortune Magazine, November, 1955) to as high as 20 million persons (Cain, *Strong in Their Pride and Free,* American Civil Liberties Union pamphlet, June, 1955). See also Brown, *Loyalty-Security Measures and Employment Opportunities,* 11 Bulletin of Atomic Scientists 117.

Whatever figure be accepted, the departure from constitutional requirements is truly all-pervasive. The unprecedented infringement on our constitutional tradition of fair hearing, which has its sharpest focus in petitioner's case, calls for effective judicial redress. As long as the Fifth Amendment retains its vitality, this Court cannot sanction continued operation of an arbitrary, unfair and unjustifiable governmental "hearing" system which works such profound and tragic consequences upon the lives of American citizens.

It is respectfully submitted that the judgment of the District Court be reversed with instructions to grant petitioner appropriate declaratory and injunctive relief.

Respectfully submitted,

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APPENDIX A

5 U.S.C., § 22, R.S. § 161:

> The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

18 U.S.C., § 798:

> (a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information . . . Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

Armed Services Procurement Act of 1947, 62 Stat. 21, 41 U.S.C. §§ 151-161 (41 U.S.C. (1952 ed.) 151 (c) (12), 153(a), later recodified with minor changes as 10 U.S.C. (Supp. V) 2304(a) (12), 2306(a)):

> 151(c) All purchases and contracts for supplies and services shall be made by advertising, as provided in section 152 of this title, except that such purchases and contracts may be negotiated by the agency head without advertising if—
>
> (1) determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress: • • •
>
> (12) for supplies or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed; • • •
>
> 153 • • • Except as provided in subsection (b) of this section, contracts negotiated pursuant to section 151(c)

of this title may be of any type which in the opinion of the agency head will promote the best interests of the Government. • • •

Executive Order 10501, December 15, 1953, 18 Fed. Reg. 7049:

Safeguarding Official Information in the Interests of the Defense of the United States

WHEREAS it is essential that the citizens of the United States be informed concerning the activities of their government; and

WHEREAS the interests of national defense require the preservation of the ability of the United States to protect and defend itself against all hostile or destructive action by covert or overt means, including espionage as well as military action; and

WHEREAS it is essential that certain official information affecting the national defense be protected uniformly against unauthorized disclosure:

NOW THEREFORE, by virtue of the authority vested in me by the Constitution and statutes, and as President of the United States, and deeming such action necessary in the best interests of the national security, it is hereby ordered as follows:

• • • • •

7(b) *Dissemination Outside the Executive Branch.* Classified defense information shall not be disseminated outside the executive branch except under conditions and through channels authorized by the head of the disseminating department or agency, even though the person or agency to which dissemination of such information is proposed to be made may have been solely or partly responsible for its production.

APPENDIX B

December 27, 1947 Statement Released by Seth W. Richardson, Chairman, Loyalty Review Board[33]

The employe will not be permitted to examine or inspect this report of the bureau, at any time, and such deprivation gives rise to one of the very controversial points involved in the operation of the entire loyalty program.

The point has been vigorously presented to us as follows. "Every employe accused of disloyalty should be given the right to confront his accusers, and subject them to cross-examination." This contention has obvious force, and presents grave considerations to us. Why have we been unable to accept it?

In nearly all cases the bureau secures the facts for inclusion in its reports from confidential sources, many of them closely connected with considerations sounding in national security. We are advised by the bureau, that in its experienced opinion, practically none of the evidential sources available will continue to be available to the bureau if proper secrecy and confidence cannot at all times be maintained with respect to the original source of information, and that if the source of such information is to be disclosed—save in exceptional cases—the bureau can be of much less service to the board in making the essential basic investigation.

In cases where sources of evidence are not confidential, and disclosure of sources, possibly with pertinent oral testimony, will not tend to hinder or impede the investigative work of the bureau, we will make every reasonable effort to extend the scope of the evidential source disclosure, to the affected employe, at the hearing. But it must be appreciated that in the great majority of the cases, we apprehend that disclosure of evidential sources to the employe, and the resulting opportunity of cross-examination of such sources by him, will probably not be practicable.

We recognize that the use of such a report as evidence by the various loyalty boards, without disclosure of the con-

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[33] The entire statement, a portion of which is here reproduced, is printed in the New York Times, December 28, 1947, at p. 28.

tents to the employe, does subject the employe to non-confrontation of witnesses against him, and does deprive him of the right of cross-examination of such witnesses—a situation which ought to, and does, give rise to the most serious questions in the minds of the general public. So serious is such a situation that it has been strongly urged upon us by responsible persons, that, rather than permit such a situation to exist, the entire loyalty program should be abandoned, even if the Government should thereupon be compelled to cease attempting to screen out disloyal employes.

We have given the matter the most careful consideration, and we can see no way in which the loyalty program may have the benefit of the skilled investigation of any competent investigative agency, and particularly of the Federal Bureau of Investigation, unless the facts received in confidence by the investigators can be kept entirely confidential at all times and under all conditions.

We were, therefore, faced with the decision whether to refuse at all times to disclose the bureau report to the employe—save in the exceptional cases noted above—or to advise the Civil Service Commission that, in our opinion the proposed loyalty program as planned should not be permitted to function.

After the most careful consideration, we have concluded that the objection to non-confrontation and no cross-examination, while important, is not essentially controlling.

(4178-0)

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NO. 504

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

CHARLES ALLEN TAYLOR, *Petitioner*,

v.

NEIL McELROY, A. TYLER PORT, *Respondents*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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INTEREST OF THE AFL-CIO

This brief *amicus curiae* is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) with the consent of the parties, as provided for in Rule 42 of the Rules of this Court.

The AFL-CIO is a federation of labor unions whose total membership is approximately fourteen million. As the principal spokesman for organized working people in the United States, the Federation has set forth in the following terms its official position on the necessity for protecting traditional American freedoms against both attack from without and erosion from within:

> "This Federation is proud that the labor unions of America have traditionally stood in the forefront of the fight for the preservation and expansion of individual civil liberties. We are proud, too, that the unions comprising this Federation were among the first to point out and take steps against the dangers to our freedom and security posed by international Communism. The fight to protect this nation against Communist aggression must be carried on with vigor and determination. But the Communist threat must and can be met without endangering our traditional liberties or impinging upon the freedoms guaranteed by the Bill of Rights." AFL-CIO Resolution on Civil Liberties and Internal Security, December 7, 1955, *AFL-CIO Constitutional Convention Proceedings*, p. 113 (1955).

A great number of the members of unions affiliated with the AFL-CIO hold jobs that are covered by one or another of the various government loyalty-security programs. The largest group of members affected, probably well in excess of a million, are employed by private firms doing defense work under federal government contracts. These workers are subject to the Industrial Personnel Security Program which is under consideration in the present case. In addition, many thousands of AFL-CIO members are covered by the Atomic Energy Security Program or the Port Security Program. A smaller number are subject to the two other main federal programs, the Government Personnel Security Program embracing civilian employees of federal departments and agencies, and the Military Personnel Security Program.

Other AFL-CIO members fall within the expanding ambit of loyalty-security programs run by states or municipalities, or by private industries acting on their own initiative. The programs of private parties, operated without government sanction, will not be discussed in this Brief since they pose legal questions different from those at issue in this case.

Union officials and union lawyers have expended much time and effort to avert or right injustices under the various loyalty-security programs.[1] We have become convinced that certain features of these loyalty-security programs, notably the use of statements by informants whose identity is kept secret from the accused and often from the adjudicating boards, constitute a denial of some of the basic rights guaranteed by the United States Constitution. As a labor organization the AFL-CIO is directly interested in seeing that union members are not deprived of the means of a livelihood through unconstitutional procedures. In a larger sense, we are interested in seeing that no American is deprived of the full exercise of his constitutional liberties, and that the nation is not deprived of the traditions of fair play that are essential to the democratic process.

ARGUMENT

I. The Scope of Loyalty-Security Programs Is a Significant Factor in Determining the Constitutionality of the Programs' Procedural Safeguards.

The essence of due process is that governmental action shall not be arbitrary. A reasoned, discriminating exercise of power has been the standard consistently imposed by this Court. *Wieman* v. *Updegraff*, 344 U.S. 183; *Slochower* v. *Board of Higher Education*, 350 U.S. 551; *Speiser* v. *Randall*, 357 U.S. 513. In *Wieman* v. *Updegraff*, *supra*, this Court unanimously struck down a state statute requiring school teachers to take an oath denying affiliation with certain designated subversive organizations. The Court reasoned (pp. 191-192):

> "Indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power. The oath offends due process.***
>
> "We need not pause to consider whether an abstract

[1] See Fleischman, Kornbluh, and Segal, *Security, Civil Liberties and Unions*, pp. 9-11, 16-20, 28-38 (AFL-CIO, Washington, 1957).

> right to public employment exists. It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory."

To avoid arbitrary action in the administration of the loyalty-security programs, it is necessary "to balance the public's interest in security and the Government's right to assure it, on the one hand, as against the liberties of the individual, on the other." *Parker* v. *Lester,* 227 F. 2d 708, 716 (9th Cir. 1955); cf. *Slochower* v. *Board of Higher Education,* 350 U.S. 551, 555.

Having marked out these general principles, we will avoid burdening the Court with a repetition of the legal arguments fully set forth by petitioner in the present case, and by the petitioner and by the American Civil Liberties Union as *amicus curiae* in the similar case pending before this Court, *Greene* v. *McElroy,* No. 180, October Term, 1958. We believe, however, that if the Court is to strike a proper balance between the supposedly conflicting interests of national security and individual liberty, there should be placed before it data on the scope, methods, and impact of loyalty-security programs throughout the country. It is our purpose to supply the Court, in summary form, with such data.

We consider that this information bears directly on the basic issue now before the Court.[2] The possibility of injury to the public must be weighed against the possibility of injury to the individual. If the worst effect of the loyalty-security programs were the discharge of a Los Alamos physicist or a State Department policy maker on the basis of the confidential reports of a professional FBI undercover agent, it may be concluded that the national interest

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[2] In addition, information regarding the various loyalty-security programs should be valuable since it is obvious that the decision in the present case may have serious implications as to the constitutionality of other programs, even though the Court will only adjudicate the actual controversy before it.

in concealing counterespionage operations would have to prevail over the individual's interest in confronting the informant. However, when these programs reach nearly one-fifth of the nation's work force, thus subjecting the Pentagon gardener, the high school algebra teacher, and the labor union shop steward to the threat of discharge and loss of reputation on the basis of tales told by the neighborhood gossip or a disgruntled former employer, then it is our opinion that the balance swings to the side of the individual's interest in a full opportunity to face and rebut his accuser.

Our single thesis is that the very scope of these loyalty-security programs requires, at the least, a rational classification of the types of information that may be used against persons in various types of positions before attaching to them the infamous badge of "loyalty-security risk." To act otherwise, we submit, is to act with the arbitrariness that is offensive to due process.

In presenting the following general discussion of the loyalty-security programs, we have drawn on several authoritative studies which have appeared in recent years, principally those by Eleanor Bontecou, the Bar Association of New York City, the Commission on Government Security, Professor Ralph S. Brown, Adam Yarmolinsky, and the Department of Defense.[3]

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[3] For the genesis and early development of loyalty-security programs, see Bontecou, *The Federal Loyalty-Security Program* (Cornell, 1953). Reviews and critiques by two separate groups of leading lawyers, educators, and public officials are contained in the Association of the Bar of the City of New York, Report of the Special Committee on *The Federal Loyalty-Security Program* (1956) and *Report of the Commission on Government Security* (1957). A searching appraisal by an individual expert will be found in Brown, *Loyalty and Security* (Yale, 1958). Illuminating examples of the workings of the programs are provided by Yarmolinsky, ed., *Case Studies in Personnel Security* (1955). An official apologia is Department of Defense, *Industrial Personnel Security Review Program, First Annual Report* (1956).

We will consider in order the loyalty-security programs conducted by the federal government and those conducted by state and local governments.

II. The Scope of Federal Loyalty-Security Programs.

A. Denial of Right of Confrontation as a Common Feature of the Programs

The federal government currently operates at least five different loyalty-security programs. They apply to groups in both federal and private employment. A common denominator of all these programs is the use of investigative agency files containing statements by secret informers. The person charged does not see these files. He does not know the identity of the informers. Even the members of the various adjudicating boards usually do not know the identity of the informers. In the present case the Hearing Board apparently rejected the sworn testimony of petitioner and eleven witnesses regarding petitioner's anti-Communist activities in his labor union, and accepted the story of the unknown informers. The Board refused to say what, if anything, it knew about the informants. (Petition for Writ of Certiorari, pp. 4-6). This Court has already had occasion to see that even "professional informers" in security cases may be guilty of lying and perjury. *Communist Party* v. *Subversive Activities Control Board*, 351 U.S. 115; *Mesarosh* v. *United States*, 352 U.S. 1.

The secrecy with which the government shrouds casual informants, as distinguished from professional undercover agents, is apparently based on the belief of such agencies as the Federal Bureau of Investigation that otherwise their sources of information would dry up.[4] This belief has been questioned in both judicial and academic quarters, on the ground that it is unproven in fact and that it is an un-

[4] See statement made by FBI Director J. Edgar Hoover before Loyalty Review Board in 1947, quoted in *Report of the Commission on Government Security*, pp. 657-658 (1957).

warranted reflection on the willingness of loyal Americans to supply their government with information needed to combat subversion. *Parker* v. *Lester*, 227 F. 2d 708, 718 n. 17 (9th Cir. 1955); Brown, *Loyalty and Security*, p. 396 (Yale, 1958). The Commission on Government Security has also disapproved the admissibility of information supplied by unidentified casual informants.[5]

In any event, the practice of utilizing the statements of secret informers goes back to the original Executive Order 9835, March 21, 1947, 12 Fed. Reg. 1935, which established the Truman "loyalty program." Part IV, section 2 of that Order provided that "the investigative agency may refuse to disclose the names of confidential informants." Other loyalty-security programs have continued the practices of the original Truman program. Thus, section 9(k) of the Sample Security Regulations attached to Executive Order 10450, April 27, 1953, 18 Fed. Reg. 2489, which set up the Eisenhower security program, declares:

> "The board shall reach its conclusions and base its determination on the transcript of the hearing, together with such confidential information as it may have in its possession."

Similarly, the hearing procedure in the case at bar was governed by a Department of Defense Regulation which denies an accused the right to face his accuser.[6]

Significantly, all these authorizations for denying confrontation are framed in absolute, arbitrary terms. No

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[5] *Id.*, pp. xviii, 670.

[6] "No classified information, nor any information which might compromise investigative sources or methods or the identity of confidential informants, will be disclosed to any contractor or contractor employee, or to his lawyer or representatives, or to any other person not authorized to have access to such information." Industrial Personnel Security Review Regulation, 32 C.F.R. § 67.1-4 (Supp. 1958).

The text of the Sample Security Regulations prepared by the Attorney General for federal agencies is contained in BNA Manual, *Government Security and Loyalty*, p. 15:101.

distinction is made between the casual informant and the undercover agent. No distinction is made between the person charged who is in a highly sensitive position, and the person charged who is in a position having no substantial relationship to the national security.

Professor Brown of Yale Law School has supplied the following tabulation of the frequency with which government witnesses have appeared at hearings in a sample selection of 326 cases arising under the various federal personnel security programs:[7]

Witnesses for Government at First or Only Hearing

	No.	*Percentage*
One or two	17	5
Three or four	3	1
None	227	70
Unknown	12	3
No hearing held	67	21
	326	100

In short, out of the 247 cases for which the figures are known and in which hearings were held, there was no confrontation in 227, or 92 per cent, of the first or only hearings.

B. Federal Civilian Employees

Loyalty-security programs for civilian personnel in federal employment will be considered first, since they may be fairly designated as the prototypes for all the other programs.

As of June 30, 1958, there were 2,382,237 paid civilian employees of the federal government, excluding employees of the Central Intelligence Agency.[8] In one way or an-

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[7] Brown, *Loyalty and Security*, Appendix B, p. 491, Table 8 (Yale, 1958). The cases were collected in 1955 under the direction of Adam Yarmolinsky on a commission from the Fund for the Republic. Data were tabulated statistically by the Bureau of Social Science Research, Inc., of Washington, D. C.

[8] *World Almanac and Book of Facts*, pp. 75-76 (1959). Data supplied by United States Civil Service Commission.

other, they are all subject to discharge on loyalty-security grounds.[8]

By far the largest number of the federal employees subject to loyalty-security procedures have been those in the Executive Branch covered by the original Truman loyalty program, established pursuant to Executive Order 9835, March 21, 1947, or by its successor, the Eisenhower security program, established pursuant to Executive Order 10450, April 27, 1953.

Executive Order 10450 attempted to establish a comprehensive security program for all departments and agencies of the federal government, and in effect for all employees therein. Section 8(a) provided the standard that the employment of any person must be "clearly consistent with the interests of the national security." Procedures under the Order were to be in accordance with those provided by P.L. 733, 64 Stat. 476, 5 U.S.C. §22-1, the principal statutory basis for the Order. P.L. 733 allows the summary suspension of employees by agency heads "when deemed necessary in the interest of national security," but grants the right of an agency hearing before final termination of employment to citizens holding permanent or indefinite appointments.

In *Cole* v. *Young*, 351 U.S. 536, this Court held that P.L. 733 was intended to apply only to positions invested with the "national security," and that the Executive Order was unauthorized insofar as it applied the summary procedures of P.L. 733 to "nonsensitive" positions.

The Personnel Security Program established by Executive Order 10450 remains in effect, of course, for civilian employees of the Executive Branch who are in "sensitive"

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[8] However, the relatively few employees of the Congress and of the Judicial Branch have been little affected. *Report of Commission on Government Security*, pp. 101-107 (1957). See also Brown, *Loyalty and Security*, p. 23 n.4 (1958).

positions. They constitute probably one-fourth to one-third of the federal civilian work force.[10] All federal employees continue subject to the Hatch Act,[11] which bars federal employment to persons advocating the overthrow of our constitutional form of government. Furthermore, about 85 per cent of the federal civilian employees are in the competitive civil service.[12] These employees are covered by a Civil Service Commission regulation specifically denying appointment where there is "reasonable doubt as to the loyalty of the person involved."[13]

The fact that *Cole* v. *Young* only resulted in a restriction on the use of Executive Order 10450 in the Executive Branch, and not in any change in the practice of denying the right of confrontation even in security cases involving holders of nonsensitive positions, is starkly illustrated by *Vitarelli* v. *Seaton*, 253 F. 2d 338 (D.C. Cir. 1958). Here an employee in a nonsensitive post was originally discharged under Executive Order 10450, after being accorded a "hearing" where no witnesses appeared against him. After *Cole*, the Secretary of the Interior finished off the

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[10] Figures of 500,000-600,000 have been supplied by the Chairman of the Civil Service Commission. N. Y. City Bar Assn., *Report on the Federal Loyalty-Security Program*, p. 146 (1956). See also Brown, pp. 239-240.

[11] Originally. the Act of August 2, 1939, §9A, 53 Stat. 1148, 5 U.S.C. §118j. Codified by the expanded Act of August 9, 1955, 69 Stat. 624, 5 U.S.C §§118p-r, which also codified appropriation riders barring subversives.

[12] N. Y. City Bar Assn., *Report*, p. 55; Brown, *Loyalty and Security*, p. 401.

[13] 5 C.F.R. §2.106 (a) (7) (Supp. 1956); see also 5 C.F.R. §9.101 (s) (Supp. 1956), making the grounds for disqualification of an applicant (such as disloyalty) sufficient cause for removal of an employee. Some procedural safeguards are provided by the Lloyd-LaFollette Act, 37 Stat. 555 as amended, 5 U.S.C. §652 (charges, opportunity to reply, and written decision for employees in competitive service), and by the Veterans' Preference Act, 58 Stat. 390, as amended, 5 U.S.C. §863 (appeal and appearance before CSC for veterans having completed probationary period).

business by merely expunging the references to 10450 and upholding the employee's discharge. This case is now pending before the Court on certiorari as No. 101, October Term, 1958.

In addition to the approximately two-and-a-half million federal employees subject to loyalty-security scrutiny, there are about two million other persons listed by the Civil Service Commission as not eligible for government service.[14] Generally, federal job applicants are granted no procedural rights at all, and may not even know why they have been rejected.[15]

C. Atomic Energy Commission

Under express statutory authorization contained in the Atomic Energy Act,[16] the Atomic Energy Commission conducts its own loyalty-security program for Commission employees and for those employees of the Commission's private contractors whose work gives them access to classified information.

Insofar as the Commission's program applies to its own employees, it embraces about 7000 persons already counted in the previous section as federal civilian employees. However, the main impact of the Atomic Energy program is on the employees of private firms constructing or operating installations under contract with the Commission.

At any one time, up to about 150,000 men are working on Commission projects, though not all these employees may have to be cleared.[17] The Commission has reported that from 1947 to 1955, 503,810 persons were investigated.[18]

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[14] N. Y. City Bar Assn., *Report*, p. 115.

[15] *Id.*, p. 109-110. This has generated remedial recommendations. *Id.*, pp. 16-17; *Report of Commission on Government Security*, pp. 51-52.

[16] 68 Stat. 942, 42 U.S.C. §2165.

[17] Brown, *Loyalty and Security*, pp. 61-62.

[18] N. Y. City Bar Assn., *Report*, p. 220.

The Commission has two types of clearances, "L" for access to Confidential material only, and "Q" for access to Secret and above. Commission procedures appear more nearly fair than those of other agencies, with one of the exceptional features being the right of applicants to secure a hearing.[19]

D. Industrial Personnel Security Program

The security program under consideration in the case at bar, the program of greatest concern to labor, is the Industrial Personnel Security Program. It is operated by the Department of Defense without specific statutory authorization. Its procedures are spelled out in elaborate security provisions embodied in contracts between private firms and the armed services.[20] Approximately 3,000,000 employees having access to classified information are covered by this program.[21]

The program requires both facility clearance and personnel clearance. A contractor's plant and key officials must first be cleared. Then the contractor must solicit clearance for any employees who are to have access to Secret or Top Secret material. In all instances the standard for clearance is that it must be clearly consistent with the interests of national security.[22]

One distinctive element of the program is of particular

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[19] *Report of Commission on Government Security*, pp. 207-209.

[20] Pertinent Defense Department regulations are the Armed Forces Industrial Security Regulation, September 21, 1956 (for military departments); Industrial Security Manual for Safeguarding Classified Information, September 21, 1956 (for defense contractors); Industrial Personnel Security Review Regulation, February 2, 1955 (procedure governing appeals). The texts of these regulations are contained in BNA Manual, *Government Security and Loyalty*, p. 25:1 ff.

[21] N. Y. City Bar Assn., *Report*, p. 64; Brown, *Loyalty and Security*, p. 179 n.16.

[22] *Report of Commission on Government Security*, pp. 259-260.

interest to unions. The contractor himself can clear an employee for access to Confidential, the most common classification, affecting 2,000,000 employees. And in fulfilling this function some contractors have resorted to ill-qualified private investigative agencies.[23] If management determines that in its judgment there is "derogatory information" about an employee, further processing is left to the military department having security cognizance of the facility. Denial of security clearance need not necessarily mean dismissal for the employee, if the employer is able and willing to transfer him to a "nonsensitive" position. Union experience, however, has been that employers seldom show much sympathy in such situations.[24]

In its procedural arrangements, the Industrial Security Program provides for centralized screening and final review in Washington, with the employee having the right to appear before one of three regional hearing boards located in New York, Chicago and San Francisco.[25] At no stage, of course, does there exist the right of confrontation.

E. Port Security Program

The Port Security Program is based on the Magnuson Act of 1950,[26] implemented by Executive Order 10173, October 18, 1950, 15 Fed. Reg. 7005, as amended. The program applies to practically all seamen on American merchant vessels and to harbor workers in restricted ports, with the standard being that the person's presence "would not be inimical to the security of the United States."[27]

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[23] Brown, *Loyalty and Security*, p. 64.

[24] A Director of Security at Republic Aviation has stated: "Fire 'em. That's my answer to anyone who asks me how to handle security risks in his plant." Quoted in Fleischman, Kornbluh and Segal, *Security, Civil Liberties and Unions*, p. 35 (AFL-CIO, Washington, 1957).

[25] *Report of Commission on Government Security*, pp. 262-263.

[26] 64 Stat. 427, 50 U.S.C. §191.

[27] *Report of Commission on Government Security*, pp. 343-345.

Administration of the program is the responsibility of the Coast Guard. Certain notice and hearing procedures have already been condemned as a denial of due process in *Parker* v. *Lester*, 227 F. 2d 708 (9th Cir. 1955).

The program is unique in that it applies to persons who are in private employment having no direct ties whatever to the government. Furthermore, it is peculiarly capable of inflicting harm, since a seaman denied clearance is effectively barred from pursuing his normal calling anywhere on ships of domestic registry. The Special Committee of the New York City Bar Association has recommended that the Port Security Program be abolished.[28]

The Coast Guard reported that as of December 31, 1955, clearance under the Port Security Program had been granted to 425,334 seamen and 395,271 longshoremen.[29]

F. International Organizations Employees Loyalty Program

Executive Order 10422, January 9, 1953, 18 Fed. Reg. 239, as amended by Executive Order 10459, June 2, 1953, 18 Fed. Reg. 3183, established an International Organizations Loyalty Board in the Civil Service Commission. This board makes an "advisory determination" regarding any "reasonable doubt as to the loyalty" of any American employed by the United Nations, its specialized agencies, or the other forty-odd international organizations in which the United States participates. The power of final decision on retention naturally resides with the international organization. As of April, 1956, there were 3100 American citizens covered by the program.[30] The Special Committee of the New York City Bar Association has concluded that this loyalty program for international employees is so irra-

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[28] N. Y. City Bar Assn., *Report*, p. 143.

[29] *Id.*, p. 115.

[30] *Id.*, p. 221.

tional, useless, and actually harmful to the interests of the United States and its citizens that it should be abolished.[31]

G. Military Personnel Security Program

The present military security programs covering the approximately 2,600,000 members of the armed forces are based on Department of Defense Directive 5210.9, April 7, 1954, as amended.[32]

In general, the standards, criteria, and procedure are much like those in the programs for federal civilian employees. Certain distinctive features, however, deserve special mention.

There is a huge turnover in the military service. Under the draft, millions of young men are exposed to the rigors of a loyalty-security check without any voluntary action on their part. Furthermore, military personnel remain subject to possible security proceedings even after they have completed active duty, if they are transferred to the reserve. As of September 30, 1956, this subsidiary group of persons covered by the military programs totaled approximately 4,000,000.[33]

A special problem is presented by the issuance of less-than-honorable discharges. In *Harmon* v. *Brucker*, 355 U.S. 579, this Court held that such discharges could not be issued on the basis of an individual's activities prior to entry into the service. This did not necessarily mean that these official stamps of disapprobation will not be affixed on the basis of an individual's activities while in the nebulous reserve status. And of course *Harmon* did not stop the

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[31] *Id.*, pp. 145-146.

[32] The DOD Directive, together with the implementing regulations of the Army, Navy, and Air Force, are set forth in BNA Manual, *Government Security and Loyalty*, p. 31:51 ff. For figures on the armed forces, see *World Almanac and Book of Facts*, pp. 734-735 (1959).

[33] *Report of Commission on Government Security*, p. 111.

military from applying the brand of dishonor in reliance on the word of secret informers.

III. The Scope of State and Local Loyalty-Security Activities.

Most states and many local communities have devised their own procedures for combating the danger of subversion.[34] Such loyalty-security inquiries may be classified under three broad headings:

1. Public employees' loyalty oaths;
2. Administrative programs analogous to those for federal personnel; and
3. Loyalty-security inquiries in connection with state licensing and taxing power.

A. Public Employees' Loyalty Oaths

At least twenty-five states, including the newest, plus the territory which hopes to become the next admitted, have registered their opposition to the international conspiracy by requiring all public employees, including teachers, to take a loyalty oath.[35] Unlike traditional constitutional oaths, which are merely a pledge to uphold the Constitution and the laws, these test oaths require an employee to swear, variously, that he is not subversive, or that he has never been subversive, or that he will not be subversive while in the public employ.

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[34] Most of the material on state and local action has been adapted from Brown, *Loyalty and Security*, pp. 92-118.

[35] Alaska, Arkansas, California, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Washington, and West Virginia. Teachers have been singled out from other employees to take a traditional "constitutional" oath in Colorado, Indiana, Michigan, Nevada, New York, North Dakota and Vermont.

Frequently there is no specific means provided for enforcing such test oaths. But failure to execute them "satisfactorily" usually means automatic loss of employment, even though the refusal is clearly only a reflection of conscientious objection.[36] False swearing may result in a perjury indictment.

The scope of the coverage of loyalty oaths will be included in the estimated totals in the next section on administrative programs.

B. Administrative Programs

More elaborate security procedures, bearing an evident kinship to the federal programs, are provided by Alabama, California, Connecticut, Florida, Georgia, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, Ohio, Pennsylvania, Texas and Washington, and by Baltimore, Los Angeles, and New York City.

The Maryland Ober Law has served as a model for about a dozen states.[37] All Maryland state agencies must screen applicants for possible subversion, and must discharge incumbents wherever "reasonable grounds" exist for the belief they are subversive. A special assistant attorney general enforces the Act. Private educational institutions receiving state funds must set up machinery to ferret out subversive persons on their staffs.

California and New York have originated their own systems. In California, all public employees are subject to

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[36] Brown, *Loyalty and Security*, p. 94n.6.

[37] Md. Anno. Code. Gen. Laws, Art. 85A (1957), upheld in part in *Gerende* v. *Board of Supervisors*, 341 U.S. 56 (confrontation not an issue). The Ober Law was followed in Florida, Georgia, Maryland, Mississippi, New Hampshire, Ohio, Pennsylvania, and Washington. The Maryland Law has been combined with the Massachusetts Anti-Communist Law, 9 Anno. Laws of Mass., c.264, §20 (1956), in Alabama, Louisiana, Michigan, and Texas.

dismissal if they refuse to answer questions about past as well as present subversive activities and associations.[38] The responsibility for establishing and administering the adjudicative process rests with the employing agency.

The first out-and-out state "security risk" statute was adopted by New York.[39] Administered by the State Civil Service Commission, this law authorizes the transfer, suspension, or discharge of employees in "security" positions, such as subway conductors. In addition, New York has the Feinberg Law,[40] which authorizes the Board of Regents to use a list of subversive organizations, like the Attorney General's list, in determining the loyalty of New York teachers. A teacher's membership in a listed organization creates a presumption of disloyalty.

The best estimate is that there are up to 2,500,000 nonprofessional public employees and up to 1,000,000 professionals (of which the largest group by far consists of public school teachers) exposed to state or local loyalty-security tests of one kind or another, generally of a high intensity.[41] This makes a total ranging perhaps between three and three-and-a-half million individuals.

C. Loyalty Inquiries Connected with State Licensing and Taxing

Lawyers have borne the brunt of state efforts to rid the licensed professions of any possible taint of subversion. Test oaths are required by Alaska, Colorado, Kentucky,

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[38] Calif. Govt. Code §§1027.5, 1028.1 (for all employees except teachers); Calif. Educ. Code §§12600-12607 (for teachers).

[39] N. Y. Laws 1951, c.233, as amended by N. Y. Laws 1954, c.105, and reenacted periodically. Upheld in *Lerner* v. *Casey*, 357 U.S. 468 (confrontation not an issue).

[40] N. Y. Laws 1949, c.360. Upheld in *Adler* v. *Board of Education*, 342 U. S. 485 (confrontation not an issue).

[41] See Brown, *Loyalty and Security*, pp. 166-169, 178.

Oklahoma, and Washington. Furthermore, applicants for the bar in about one-third of the states must complete forms under oath which contain questions dealing directly with loyalty matters. Certain arbitrary aspects of these systems have already engaged the attention of this Court.[42]

The incidence of loyalty tests in connection with other occupational licensing is sporadic and on occasion wryly amusing: pharmacists in Texas, waterfront employees in the port of New York, professional boxers and wrestlers in Indiana, and insurance salesmen and at least one piano dealer in the District of Columbia.[43]

Article 20, §19 of the California State Constitution prohibits subversives from receiving a tax exemption under state law. Without passing on the state constitutional provision itself, this Court has already struck down as a denial of due process California's implementing legislation as it applied to a veteran and a church claiming property-tax exemptions.[44]

The number of persons affected by loyalty inquiries connected with the exercise of state or local licensing and taxing powers is unknown.

IV. Summation: The Scope and Impact of Loyalty-Security Programs.

Figures have already been provided for the estimated coverage of each of the broad categories of federal and state loyalty-security programs. In seeking to obtain a combined estimate in round figures for the direct coverage of all the programs at the present time, several special allowances will be made. The two million persons listed

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[42] *Schware* v. *Board of Bar Examiners*, 353 U.S. 232; *Konigsberg* v. *State Bar of California*, 353 U.S. 252.

[43] Brown, *Loyalty and Security*, p. 118.

[44] *Speiser* v. *Randall*, 357 U.S. 513; *First Unitarian Church* v. *County of Los Angeles*, 357 U.S. 545.

by the Civil Service Commission as ineligible for government employment will not be counted. The four million reservists technically subject to the military program will not be counted. Finally, since the only official figures available on the Port Security Program are the total clearances of 800,000, an arbitrary figure of 300,000, or about one-third, will be chosen to represent a rough estimate of current exposure. With these allowances, the result is:

	In thousands
Federal Civilian Employees	2400
Atomic Energy Commission	150
Industrial Personnel	3600
Port Security	300
International Organizations	3
Military Personnel	2600
State and Local Employees	3500
Total, round off to	13,000

Professor Brown of Yale Law School has provided a different type of tabulation of current loyalty test exposure, figured according to the profession or occupation of the employee rather than the particular governmental program. His totals follow:[45]

	In thousands
Professions, including teachers	1600
Managers	300
Government and military	7200
Extractive industry	—
Manufacturing, construction, transport, utilities	4500
Trade, service, finance	—
Agriculture	—
Total, round off to	13,500

These figures include an estimate of about one-and-a-half million persons who are subject to a loyalty-security check

[45] Brown, *Loyalty and Security*, p. 181.

by employers acting on their own initiative. Eliminating this group, there are left roughly 12,000,000 persons out of a total working population of 65,000,000 who are presently exposed to loyalty scrutiny of some sort under programs conducted or sponsored by the federal or state and local governments.

Of this vast contingent of 12,000,000 persons, only a small proportion are in positions which can reasonably be regarded as related to the national security. Restricting its studies to the approximately 6,000,000 persons whom it estimated as being covered by the civilian security programs of the federal government, the Special Committee of the New York City Bar Association concluded that coverage could properly be reduced to less than 1,500,000. The Committee cited official figures to the effect that there are only between 500,000 and 600,000 sensitive civilian federal positions, and only 800,000 positions in the Industrial Security Personnel Program involving access to Secret or Top Secret material.[46] Professor Brown estimates that with the military included, the programs with some basis in security considerations now reach between seven and eight million persons. He believes that by restricting coverage to sensitive positions the total embraced by all the security programs could be cut to not much more than 2,000,000.[47]

To Professor Brown is also owed a debt for advancing into the tangled thicket of official figures, and coming out with a considered calculation of the total number of dismissals, or denials of clearance equivalent to dismissals, under the various security programs. A summary of his findings is as follows:[48]

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[46] N. Y. City Bar Assn., *Report*, p. 146.

[47] Brown, *Loyalty and Security*, p. 253.

[48] *Id.*, p. 182. For detailed estimates, see *id.*, Appendix A, pp. 487-488. Detailed statistics from official sources are contained in N. Y. City Bar Assn., *Report*, Appendix A, pp. 219-226.

All federal employees, including military	3900
Private employees subject to federal programs	5400
State and local government employees	1000
Self- and privately employed	1200
Total	11,500

From this total should be struck the estimate of 1200 persons who lost employment through private screening. This leaves a round figure of 10,000 individuals who have been denied clearance in programs operated under governmental authority.

Regardless of whether a charged employee is cleared or not, a security proceeding may be very costly to him in terms of both time and money.[49] And almost completely incalculable is the damage to democratic traditions, to employee morale, to the inquiring mind.[50]

In assessing the reasonableness of this quest for security via the testing of ideology,[51] it seems not inappropriate to add one final item to the scales, now that we have placed in the balance the scope and impact of the programs. Measured by the goal apparently aimed at, this is the achieve-

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[49] In the sample selection of 326 cases referred to in note 7 *supra*, at least 65 per cent of the proceedings resulted in clearances. Nevertheless, 65 per cent of the persons under charges were discharged or suspended without pay pending final disposition of the case. About 60 per cent of the cases took more than six months to process. In 25 per cent of the cases counsel fees ranged from $200 to $499, and in about 30 per cent they were $500 or more. Brown, *Loyalty and Security*, Appendix B, pp. 493-494, Tables 13-15, 17.

[50] A survey of opinion on the "intangible costs" is made in N. Y. City Bar Assn., *Report*, pp. 124-133, 212-215.

[51] That the thrust of questioning in security hearings is primarily ideological will be seen from Brown, *Loyalty and Security*, pp. 42-43, and Appendix B, p. 492, Table 9. Cf. Yarmolinsky, ed., *Case Studies in Personnel Security* (1955).

ment of the myriad loyalty-security programs and their array of secret informers: so far as is known, there has been uncovered by these procedures not one single spy or saboteur or revolutionary.[52]

CONCLUSION

For the foregoing reasons and for the reasons stated in the Brief for Petitioner, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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[52] Statement of Loyalty Review Board Chairman Seth S. Richardson, "The Federal Employee Loyalty Program," 51 Col. L. Rev. 546, 556 (1951); questioning of Civil Service Commission Chairman Philip Young, *Hearings before a Subcommittee to Investigate the Administration of Federal Employees' Security Program of the Senate Committee on Post Office and Civil Service*, 84th Cong., 1st Sess., Pt. 1, pp. 707-708 (1955); Brown, *Loyalty and Security*, p. 36n.21. See also cases collected in Department of Defense, *Industrial Personnel Security Review Program, First Annual Report* (1956); Yarmolinsky, ed., *Case Studies in Personnel Security* (1955).

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JAMES R. BROWNING, Clerk

No. 504

In the Supreme Court of the United States

OCTOBER TERM, 1958

CHARLES ALLEN TAYLOR, PETITIONER

v.

NEIL MCELROY, A. TYLER PORT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS

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CITATIONS

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BRIEF FOR THE RESPONDENTS

OPINION BELOW

The oral opinion of the United States District Court for the District of Columbia (R. 473–74) is not reported.

JURISDICTION

The order of the District Court granting respondents' motion for summary judgment and dismissing the complaint was entered on October 14, 1958 (R. 475–76). A notice of appeal to the Court of Appeals for the District of Columbia Circuit was filed on the same day (R. 476), and the appeal was docketed in that court on October 16, 1958 (R. 477). The case was not submitted to or decided by the Court of Appeals. The petition for a writ of certiorari was filed on November 8, 1958, and was granted on December

15, 1958 (R. 480). 358 U.S. 918. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Petitioner, an employee of a government contractor engaged in defense production of a classified nature, was denied access to classified defense information after a determination by appropriate government officials that the granting of such access would not be clearly consistent with the interests of national security. The determination was made on the basis of evidence offered by petitioner and confidential information contained in government files, summaries of which were furnished to petitioner to the extent permitted by security considerations. Subsequently, by order of the Acting Secretary of Defense, the adverse determination was set aside, petitioner's requested clearance was granted, and all prior findings in the case were expunged. The questions presented are:

1. Whether the order setting aside the adverse determination, granting petitioner the security clearance requested by his employer, and expunging all prior findings in the case rendered the cause moot.

2. Whether the Department of Defense regulations establishing the procedures pursuant to which petitioner was once denied access to classified information were authorized by statute or otherwise.

3. Whether petitioner has an interest protected by the due process clause of the Fifth Amendment in obtaining from the Department of Defense an affirmative determination that his access to classified defense

information is clearly consistent with the national security.

4. Whether the procedures by which petitioner was once denied access to classified information satisfied the requirements of due process of law.

STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the statutes and regulations involved are set out in the Appendix to the brief for the respondents in *Greene* v. *McElroy*, No. 180, this Term.

STATEMENT

Petitioner is a lathe operator (formerly a tool and die maker, or milling machine operator) with the Bell Aircraft Corporation, a company which throughout the relevant period has been engaged in the manufacture of equipment for the armed forces of the United States (R. 13). On June 14, 1957, petitioner was informed by the Director of the Defense Department Office of Industrial Personnel Security Review that "the granting of clearance to you for access to classified defense information is not clearly consistent with the interests of national security" (R. 52). This suit was instituted on April 24, 1958 (R. 1), seeking a judgment (a) declaring that petitioner is entitled to an administrative hearing at which "he is given opportunity to be confronted with the witnesses and the evidence upon which the charges are based;" (b) declaring that "the determination of June 14, 1957 denying [petitioner] access to classified defense information was in violation of his rights under the Fifth Amendment to the Constitution of the United

States;" and (c) restraining the respondents from enforcing the denial of such access and ordering that "said denial be reversed, rescinded and annulled" (R. 6–7).

The District Court, on October 14, 1958, granted the respondents' motion for summary judgment and dismissed the complaint (R. 475–76). An appeal was noted to the Court of Appeals for the District of Columbia Circuit on the same day (R. 476). The petition for certiorari was filed in this Court prior to a hearing in the Court of Appeals. The factual background of the case, both before and after the institution of the litigation, is as follows:

1. *Prior to the filing of the complaint.* Petitioner's employment with Bell Aircraft began on February 21, 1941, and, with the exception of a short period of time not here material, continued uninterrupted until September 11, 1956 (R. 29–32). For almost all of that period, petitioner had a clearance for access to classified defense information up to the level of "confidential," which had been granted him by the Corporation in accordance with a basic security agreement entered into with the Government for the performance of defense contracts (R. 29–30, 31–32). That agreement incorporated by reference the requirements of the Department of Defense Industrial Security Manual for Safeguarding Classified Security Information (R. 14–15), which in turn provided:

> [§ 66.6] *General requirements.* The Contractor * * *
>
> (c) Shall exclude (this does not imply the dismissal or separation of any employee) from

any part of his plants, facilities, or sites at which classified work for any military department is being performed, any person or persons whom the Secretary of the military department concerned or his duly authorized representative, in the interest of security, may designate in writing.

* * * * *

[§ 66.16] *General.* An individual shall be permitted to have access to classified information only when cleared by the Government or by the contractor, as the case may be, as specified by this subpart. He will be given access to such material on a "need to know" basis and only to the extent of his clearance. * * *

[§ 66.18] *After award of contract.* (a) In the event a contract is awarded, in addition to those individuals cleared under the provision of § 66.17, access to classified information, except as provided in paragraph (b) of this section, is authorized only to individuals as specified in the following:

(1) United States citizen employees of the contractor who require access to information classified "Top Secret" or "Secret" * * * and who have been cleared by the Government.[1]

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[1] The provisions of the Manual are quoted as stipulated by the parties (R. 14–15). Sections 66.16 and 66.18 (as classified to Title 32, C.F.R.) are as amended by 20 Fed. Reg. 6218, effective May 3, 1955. The language of § 66.6 appears unaccountably to have been taken from an earlier version (then § 21.6, 19 Fed. Reg. 2206, effective January 19, 1954), but the differences in wording are immaterial. The provisions of the Manual quoted in our brief in *Greene* v. *McElroy*, No. 180 (at pp. 3–4) are, it may be noted, taken from a still earlier version (January 18, 1951).

In order to utilize petitioner in his capacity as tool and die maker on a contract which required access to classified information up to the level of "secret," Bell Aircraft had petitioner complete the prescribed security forms and submitted those forms to the Defense Department with a request that a "secret" clearance be issued to him (R. 15–16, 30, 32). As the result of the investigation initiated by that request, Bell Aircraft and petitioner were notified, on September 6 and 10, 1956, that petitioner's existing security clearance was suspended pending administrative processing of the case, in accordance with Defense Department Directive 5220.6 (20 Fed. Reg. 1553)[2] (R. 34–36). Petitioner was furnished with a detailed Statement of Reasons for the action and was advised of his right to reply to the statement in writing or to have a hearing (R. 37–40).

In summary, the information contained in the Statement of Reasons was that petitioner had been (for a period of about eighteen months during 1942 and 1943), and might still be, a member of the Communist Party; that he had held Communist Party membership book or card No. 3060; that during the eighteen-month period in question he had regularly paid membership dues to the Party; that he knew, or had reason to know, of the character and purposes of the organization and had been, and might still be, in sympathy with such purposes; that in 1941 and 1942 he had signed nominating petitions for the Communist Party in New

[2] Pertinent portions of the directives are set out in the Appendix to the brief for the respondents in *Greene* v. *McElroy*, No. 180, this Term.

York State elections; that he had a sympathetic interest in Communism; and that he had made misrepresentations in his Personnel Security Questionnaire by denying his membership in the Communist Party.[1] As a result of the suspension of his clear-

[1] The text of the Statement of Reasons (R. 38–40) was as follows:

STATEMENT OF REASONS

(All criteria listed below refer to subparagraphs under Section III, paragraph 13a, Department of Defense Directive No. 5220.6, dated 2 February 1955)

1. Criterion (4):

a. Information before this Board indicates that you have had, and may still have, membership in the Communist Party. This information is:

(1) In 1942 and 1943, for a period of about 18 months, and perhaps for a longer period, you were a member of the Communist Party, and during all or a part of that period, or perhaps for a longer time, you held Communist Party membership book (or card) No. 3060, evidencing your membership in the Communist Party. (The Communist Party has been designated by the Attorney General of the United States, pursuant to Executive Order No. 10450, as having interests in conflict with those of the United States.)

(2) By a Communist Party transfer card dated on or about 15 July 1943, you were transferred from "Branch B and C" of the Communist Party to "Branch 12" of the Communist Party; and on said transfer card it was indicated that your dues had been paid to and including April 1943.

(3) During a period of about 18 months in 1942 and 1943, and perhaps during other years and for a longer period, you paid regular membership dues to the Communist Party.

b. Information before this Board indicates that at the time of your membership in the Communist Party, as aforesaid, you knew of the character, aims and purposes of said organization, or had reason to know and should have known thereof; and that you were, and may still be, in sympathy

ance, petitioner's employment with Bell Aircraft was terminated by the Corporation on September 11, 1956

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with and in support of such aims and purposes. This information is:

(1) In 1941 and 1942, while residing in Buffalo, New York, or thereabouts, you signed Independent Nominating Petitions for the Communist Party, thus signifying a preference for Communist Party candidates in New York State elections.

(2) That contained in subparagraphs a(2) and a(3), [of] paragraph 1.

2. Criterion (10): Information before this Board indicates that you have a sympathetic interest in Communism. This information is that contained in paragraph 1, preceding.

3. Criterion (16): In a Personnel Security Questionnaire signed by you and dated 8 September 1954, and delivered to the Bell Aircraft Corporation, Buffalo, New York, you failed to list the Communist Party in Item 26 thereof which reads "Organizational Membership (List all organizations except labor unions in which you hold or have held membership)," and you indicated "None"; and you certified that the entries made by you in said Questionnaire were true, complete and correct to the best of your knowledge and belief, and were made in good faith. In an attachment to your Personnel Security Questionnaire dated 2 July 1956, Form DD 48-1 "Certificate of Non-Affiliation With Certain Organizations," also dated 2 July 1956 and signed by you, you answered in the negative the questions pertaining to whether you had ever been a member of, or had ever affiliated or associated with, any of the organizations listed in paragraph II, which said paragraph lists as the first item "Communist Party, USA., its subdivisions, subsidiaries and affiliates." In view of the information set forth in paragraph 1 herein, it appears that by such omissions of material facts and by such negative answers, you deliberately misrepresented that which you were required to disclose, to wit, that you were or had been a member of the Communist Party.

4. Criterion (20): Information before this Board furnishes reason to believe that you may be subject to coercion, influence or pressure which may cause you to act contrary to the best interests of the national security. This information is that contained in paragraphs 1, 2 and 3, preceding.

(R. 40–41). Although the company engaged in some work other than defense contracts (R. 13), it was necessary for petitioner to have a "secret" personnel security clearance in order for him to continue to perform his duties as a tool and die maker (R. 13, 30, 32).

On October 9, 1956, petitioner submitted to the Office of Industrial Personnel Security Review an affidavit in reply to the Statement of Reasons and requested that he be given a hearing in person at the earliest possible date (R. 41–45). In general, the affidavit constituted a denial of the matters contained in the Statement of Reasons. In accordance with petitioner's request, a hearing, at which petitioner appeared with counsel, was held before the New York Industrial Personnel Security Hearing Board on November 1, 2, and 14, 1956 (R. 125–425). The Board heard the testimony of petitioner and the witnesses called in his behalf; the Government called no witnesses to testify nor did it produce the confidential investigative reports upon which the Statement of Reasons was predicated (R. 18). On the basis of this hearing, together with the confidential information contained in the government file in the case, petitioner was advised, on June 14, 1957, that the granting of clearance to him for access to classified defense information "is not clearly consistent with the interests of national security" (R. 52). This letter stated that "in reaching this determination, the facts alleged in the Statement of Reasons, and the conclusions drawn therefrom, except as to signing the nominating petitions, were true as stated" (*ibid.*). By a separate letter, Bell Aircraft was informed of this decision and

was advised that the decision was not intended to prevent petitioner from performing such nonclassified work as the Corporation might have available for him (R. 51).

On November 22, 1957, petitioner again set in motion the administrative processes of Directive 5220.6 by requesting Secretary McElroy to reverse the June 14, 1957, determination (R. 53–57). Upon receipt of this request, the case was placed under review, and petitioner's counsel was informed on February 3, 1958, that, although the adverse determination would not be reversed on the basis of the then-existing record (since the findings were reasonably supported), it was found appropriate to reopen the case and to conduct a further investigation to obtain any additional information that might be of value (R. 58–59). On April 17, 1958, the Court of Appeals for the District of Columbia Circuit decided the case of *Greene* v. *McElroy*, 254 F. 2d 944, now pending in this Court on writ of certiorari, No. 180, this Term. On April 24, 1958—and despite the pendency of the administrative proceedings begun at petitioner's request—the present suit was instituted in the District Court.

2. *Subsequent to the filing of the complaint.* On May 30, 1958, Secretary McElroy set aside the June 14, 1957, determination and ordered further proceedings conducted under the provisions of Directive 5220.6 (R. 59–60). Petitioner's counsel was advised that "although, as previously stated, the adverse determination was neither arbitrary nor capricious but was, on the contrary, reasonably supported, nevertheless it is appropriate in this instance to conduct fur-

ther proceedings" (R. 60). Accordingly, the case was once again referred to the New York Industrial Personnel Security Hearing Board for processing (R. 65–66).

On June 19, 1958, petitioner was served with an Amended Statement of Reasons (R. 66–75). In summary, the information contained in this statement paralleled that contained in the original Statement of Reasons, with the following material differences: [4]

[4] The text of the Amended Statement of Reasons (R. 68–75) was as follows:

AMENDED STATEMENT OF REASONS

(All criteria listed below refer to subparagraphs under Section III, paragraph 13a, Department of Defense Directive No. 5220.6, dated February 2, 1955.)

1. Criterion (4): Information before this Board indicates that, with knowledge or reason to know of the subversive aims and purposes of the Communist Party and with intent to support those aims and purposes, you were a member of the Communist Party of Erie County, New York, for a period approximating 18 months in 1942 and 1943, during which period your places of residence in Buffalo, New York, included 523 Masten Avenue and 1464 Michigan Avenue; that during a portion of that period you were sympathetically associated and affiliated with the Communist Party and knowingly and actively cooperated with divers persons known to you to be members of the Communist Party in working for the aims and purposes of the Party; that during the later portion of your said membership in the Communist Party you opposed certain policies of the Communist Party and certain Communist Party endorsed candidates for union office and, instead with knowledge or reason to know of the subversive aims and purposes of the Socialist Workers Party and intending to support those aims and purposes, you became sympathetically associated and affiliated with the Socialist Workers Party, which deviation from the Communist Party policies and from support of candidates together with other factors hereinafter set forth and together with sympathetic association and affiliation with the Socialist

(a) instead of alleging that petitioner might still be a member of the Communist Party, it was stated that he had been expelled from membership in the latter part of 1943; (b) it was not alleged that he had signed nominating petitions for the Communist Party;

Workers Party, resulted in your expulsion from the Communist Party, but notwithstanding all of which you may still be a sympathetic supporter of the subversive aims and purposes of the Communist Party, and may still be sympathetically associated with the Socialist Workers Party.

(*Communist Party:* On May 28, 1942, in connection with the Harry Bridges case that was widely publicized throughout the United States at that time, the Attorney General of the United States characterized the Communist Party of the United States of America as an organization which, "* * * from the time of its inception in 1919 to the present time, * * * believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States."

Even before that date, the Communist Party had been officially characterized by various governmental groups as an instrumentality of the Soviet Union, e.g., the Annual Report of the Special Committee on Un-American Activities, House of Representatives, dated January 3, 1940, wherein it was described as a foreign conspiracy masked as a political party which was actually functioning for the Soviet Union.

Socialist Workers Party: The Socialist Workers Party represents the Trotskyite wing of the Communist movement in the United States. One issue of its official newspaper, "Militant," described its principles in the following language:

"The belief that in such a country as the United States we live in a free democratic society in which fundamental economic change can be effected by persuasion, by education, by legal and purely parliamentary methods is an illusion. While relying primarily on mass actions, propaganda and advocation as the means [to] further its revolutionary aim, the Party will also participate in electoral campaigns, although at all times contending against the fatal illusion that the masses can accomplish their emancipation through the ballot box."

The Socialist Workers Party was officially characterized by the Attorney General of the United States in a letter released

(c) it was alleged that petitioner became actively and outspokenly opposed to certain Party policies and Party-endorsed candidates for union office, that he became sympathetically affiliated with the Socialist Workers Party, that he ceased paying Communist

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for publication on December 4, 1947, as a subversive and Communist organization which seeks to alter the form of government of the United States by unconstitutional means. More recently it has been designated by the Attorney General as an organization within the purview of Executive Order 10450.)

This information is:

(1) You became a member of the Communist Party, Erie County, New York, in about the summer of 1942. You were a member of the Aircraft Division or Aircraft Branch. For a while you were a member of the "B and C" Branch and then, in about July 1943, you were transferred from the "B and C" Branch to the "12th Ward" Branch. Your membership Book No. was 3060.

(2) In the latter part of 1943, you were expelled from membership in the Communist Party. You had personal knowledge of this expulsion.

(3) During the earlier portion of your Communist Party membership in 1942 and 1943, you paid Communist Party dues, sometimes paying them directly to Svea Katz, the Erie County Communist Party Secretary; you attended Communist Party meetings, some of which took place at Communist Party Headquarters at 751½ W. Chippewa Street, Buffalo, New York, and some at your own residence at 523 Masten Avenue; on at least one occasion you distributed Communist Party leaflets at the Municipal Auditorium in Buffalo; you supported Communist Party policies; you followed the Communist Party line.

(4) Later during this same period of Communist Party membership, you became actively and outspokenly opposed, as hereinafter indicated in this subparagraph, to certain Communist Party policies and certain Communist Party endorsed candidates for union office. You opposed the "no strike pledge" and "incentive pay" policies supported by the Communist Party, and you opposed Frankenstein and Addes who were endorsed by the Communist Party as candidates for

Party dues and attending Communist Party meetings, and that he might still be a sympathetic supporter of the subversive purposes of the Communist Party and might still be sympathetically affiliated with the Socialist Workers Party; and (d) it was alleged

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union office. You affiliated yourself with a group of persons who supported Socialist Workers Party policies and objectives such as militant action and strikes. Consistent with Socialist Workers Party policy, and contrary to Communist Party policy, you were one of the leaders in a brief strike at the Bell Aircraft plant where you worked. You stopped paying Communist Party dues and stopped attending Communist Party meetings.

(5) Because of your active opposition to certain Communist Party policies and candidates, you became the subject of discussion among Communist Party members and leaders. You were aware of their membership in the Communist Party and of their disapproval of your actions. For instance, you know that Freda Werb, James Conners, Clara Lester, and Sam Wiseman were Communist Party members and leaders and you know that your actions hostile to certain Communist Party policies and candidates were a matter of concern to them because, among other things, they called you before them in their official capacity as Communists and admonished you.

2. Criterion (1): Information before this Board indicates that you had and may still have a sympathetic interest in the Communist movement. This information is that contained in paragraph 1, preceding.

3. Criterion (16): You completed and signed two "Personnel Security Questionnaires" and a Certificate of Non-Affiliation with Certain Organizations," each containing deliberate falsifications, misrepresentations, and omissions of material facts. One such Questionnnaire was dated 8 September 1954, and the other was dated 2 July 1956, and the Certificate of Non-Affiliation was dated 2 July 1956. The Questionnaire and the Certificate were delivered to the Bell Aircraft Corporation, Buffalo, New York, your then employer, and each contained a statement certifying that the entries "made by me are true, complete, and correct to the best of my knowledge and belief

that petitioner had made false or misleading statements in his written reply to the original Statement of Reasons and in his testimony before the Hearing Board during the hearing held on November 1, 2, and 14, 1956.

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and are made in good faith." These falsifications, misrepresentations, and omissions were:

(1) By Item 25 of each of the two Questionnnaires you were requested to list all of your places of residence "from 1 January 1937, starting with present." In response to this request, you omitted from each of these two Questionnaires your place of residence at 1464 Michigan Avenue, Buffalo, New York, where you resided during a portion of the years 1942 and 1943.

(2) By Item 26 of the Questionnaire dated 8 September 1954, you were requested to show your "Organizational Membership (List all organizations except labor unions in which you held or have held membership)." In response to this request, you inserted the word "None." By Item 26 of the Questionnaire dated 2 July 1956 you were requested to show your "Organizational Membership. List all organizations except labor unions and except organizations listed on DD Form 48–1 in which you hold or have held membership." In response to this request you entered the word "None." In the Certificate of Non-Affiliation, in response to a series of questions asking whether you then were or ever had been a member of, or associated or affiliated with, any of a list of organizations which included, among others, the following: "Communist Party, U.S.A., its subdivisions, subsidiaries and affiliates," and "Socialist Workers Party, including American Committee for European Workers' Relief" you entered the word "No." As set forth in paragraph 1 herein, you had been a member of the Communist Party, and had been and might still be associated and affiliated with the Communist Party, and had been and might still be associated and affiliated with the Socialist Workers Party.

4. Criterion (15): Information before this Board indicates that you are not reliable or trustworthy. This information is:

Petitioner submitted a written reply to the Amended Statement of Reasons on June 25, 1958 (R. 75–86). He noted that (as he thought) the Amended Statement was substantially identical with the former charges and again, in general, denied the truth

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(1) The information set out under paragraphs 1, 2, and 3 above.

(2) Your sworn reply dated October 9, 1956 to the Statement of Reasons issued under date of September 10, 1956, and your testimony given under the applicability of Title 18, Section 1001, of the United States Code, during the hearing held in your case before the New York Industrial Personnel Security Hearing Board on November 1, 2, and 14, 1956, contain, in substance, the following material statements which were deliberately and knowingly either false or misleading:

(a) That you have never been a member of the Communist Party or of any branch of the Communist Party.

(b) That before your receipt of the Statement of Reasons in this case you had no knowledge of the subversive aims and purposes of the Communist Party.

(c) That you have never had a sympathetic interest in Communism.

(d) That you have not knowingly paid Communist Party dues.

(e) That you have never paid any money that to your knowledge went to the Communist Party.

(f) That you have not attended Communist Party meetings.

(g) That you have never visited Communist Party Headquarters when located at 75½ W. Chippewa Street, Buffalo, New York.

(h) That no group or organization other than your own local union sought your support for opposition to the "no strike pledge" during 1942 and 1943 while you were employed by Bell Aircraft at Buffalo, New York.

(i) That you did not know Clara Lester or ever hear her name until the hearing mentioned in subparagraph 4(2), preceding.

(j) That you did not know Svea Katc (Katz).

of the adverse information contained in the Statement, including the new matters which had not been part of the original charges.

With respect to his right to a new hearing before the Board, petitioner stated that he desired a hearing

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(k) That you did not know Sam Wiseman, at least not prior to 1943.

(l) That your answer "None" to Item 26 of your aforementioned Personnel Security Questionnaires dated 8 September 1954 and 2 July 1956, in so far as such answer was intended to encompass membership in the Communist Party or any of its subdivisions, subsidiaries, and affiliates, was a truthful answer.

(m) That your answer "No" to questions 1 through 6 of your aforementioned "Certificate of Non-Affiliation with certain Organizations" dated 2 July 1956, in so far as such answer was intended to encompass membership in the Communist Party or any of its subdivisions, subsidiaries, and affiliates, and in so far as it was intended to encompass affiliation or association with the Socialist Workers Party or with the Communist Party or any of its subdivisions, subsidiaries, and affiliates, was a truthful answer.

(3) The information before this Board which forms the basis for the allegations contained in this Amended Statement of Reasons shows that the information relied upon combines a specific reference to one of the following names: "Charles Taylor" or "Charlies Taylor" or "Chas. Taylor" or "Charles T" or "Charles Allen Taylor" with one or more of the following descriptive items all of which, according to information before this Board, apply to you: (A) He was employed by Bell Aircraft Corporation, Buffalo, New York, during 1942 and 1943 and left Buffalo before 1945. (b) In his employment by Bell Aircraft in Buffalo, New York, he worked as a tool maker. (c) He was a member of Local 501, UAW-CIO, at Bell Aircraft in Buffalo, New York, and held office of union shop steward and union committeeman. (d) He resided at 523 Masten Avenue, Buffalo, New York, except that for a short while in the years 1942 and 1943 he left that address and resided at an address on Michigan Avenue, Buffalo, New York, and this ad-

only in the event that the Board would confront him with the evidence upon which the Amended Statement of Reasons was based (R. 85). In response to this qualified request, the Hearing Board advised petitioner's counsel that "It is a standard procedure of the Department of Defense to invite witnesses to the extent that security considerations permit. The Department does not make it a practice to reveal the names of Government witnesses which it may intend to produce in advance of a hearing, nor is it prepared to state as a matter of fact whether any witnesses will be available in the instant case at the time of hearing" (R. 87). In reply to the Board's renewed request that petitioner advise it whether or not he desired a further hearing (R. 87–88), petitioner's counsel, by telephone, agreed with the Board that a hearing should be scheduled for July 11, 1958 (R. 88).

On that date, a hearing was held (R. 88–94, 425–33) at which petitioner was informed that efforts by the

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dress was 1464 Michigan Avenue, Buffalo. (e) In 1943, he took a leading part in a brief strike at Bell Aircraft where he worked. (f) In 1943, he was elected as a delegate from local 501 to the 1943 UAW–CIO convention. (g) At the 1943 UAW–CIO convention to which he went as a delegate, he voted in support of the Reuther Group. (h) At a local union meeting in July 1943, at which a resolution supporting Lewis' strike policy was passed, he spoke in favor of this policy on the union floor. (i) A photograph.

5. Criterion (20): Information before this Board furnishes reason to believe that you may be subject to coercion, influence or pressure which may cause you to act contrary to the best interests of the national security. This information is that contained in paragraphs 1, 2, 3, and 4 preceding.

Government to obtain witnesses were still incomplete. Petitioner's request for additional information concerning the sources of the Government's evidence and the informants available to the Board was, with one minor exception (R. 92), denied (R. 89–93). Petitioner took the position that, without confrontation of witnesses and an opportunity to examine the adverse information, the hearing could not proceed in good faith, and no additional evidence was presented (R. 20, 93–94).

On July 23, 1958, petitioner's counsel was informed that the Government's attempt to obtain witnesses had been completed and that, within the limitations of security considerations, the only witnesses the Board would be able to present could testify solely to petitioner's place of residence in Buffalo during a portion of the years 1942 and 1943 (R. 94–96). Counsel was advised that this testimony would be relevant, not only to the omission of this information by petitioner from his Personnel Security Questionnaires (see ¶ 3(1) of the Amended Statement of Reasons, set out in note 4, *supra*, at pp. 14–15), but also to "Mr. Taylor's alleged former membership in the Communist Party inasmuch as some of the information tending to show his membership in the Communist Party reflects his residence during that period at that address" (R. 95). The Board stated that it proposed to conduct one further hearing to receive the testimony of these witnesses and any other evidence that either side might desire to introduce.

Petitioner's counsel responded on July 25, 1958,

that he was willing to stipulate to the omission of the address on the Personnel Security Questionnaire and that he saw no purpose to examining witnesses who could testify only to the fact of residence, which was admitted, and not to its relationship to membership in the Communist Party (R. 97–102). This offer to stipulate was accepted by the Hearing Board, and a further hearing was scheduled for August 1 for the purpose of introducing additional matters into the record (R. 435).

At the August 1st hearing (R. 102–15, 434–57), the Chairman of the Board read into the record detailed information obtained from six confidential sources concerning the charges against petitioner (R. 102–04). Counsel for petitioner posed several questions concerning these sources (R. 106–14). The Board reserved its ruling on the questions until August 11, 1958, when it advised petitioner's counsel that it could not, for security reasons, furnish him the information requested since it concerned "confidential sources of information, investigative techniques and disclosure of efforts made by the Board to assess the reliability and weight of the sources of the information" (R. 114–17).

On September 12, 1958, petitioner moved for summary judgment in the District Court in this action which, as noted above, had been commenced on April 24, 1958 (*supra*, p. 10) (R. 21). By a letter dated October 13, 1958, petitioner was advised by the Director of the Office of Industrial Personnel Security Review that the Hearing Board had again determined, on the basis of all the available information, that the granting of clearance

to petitioner for access to classified defense information would not be clearly consistent with the interests of national security (R. 118–19). Petitioner was at that time furnished with a statement of the Board's findings on the allegations contained in the Amended Statement of Reasons (R. 120–24). Most of the charges were upheld, with the following significant omissions: (a) it was not found that petitioner had ever had a sympathetic interest in Communism, that he had been a *sympathetic* member of the Communist Party, or that he had lied when he denied charges to that effect; (b) it was not found that petitioner had been affiliated with the Socialist Workers Party, or that he had lied when he denied that charge; (c) there were no findings as to possible Communist membership or associations after 1943.

On the following day (October 14), petitioner's motion for summary judgment, along with a similar motion made by respondents, was heard before the District Court (R. 458–75). The court ruled from the bench that respondents were entitled to judgment as a matter of law under the "controlling" decision of the Court of Appeals in *Greene* v. *McElroy, supra* (R. 473–76). On the same day, petitioner filed a notice of appeal, and the record was docketed in the Court of Appeals on October 16, 1958. The petition for a writ of certiorari was filed on November 8, 1958, seeking review prior to the rendition of judgment in the Court of Appeals. The respondents' memorandum on the petition was filed on December 8, 1958.

On December 15, 1958, this Court granted the petition (358 U.S. 918) and assigned the case for argument immediately preceding the *Greene* case, No. 180.

As stated in the respondents' memorandum in response to the petition, the case remained the subject of continuing administrative review by the Departments of Defense and Justice. That review culminated in the further administrative action taken on December 31, 1958, which is reflected in the documents reproduced in the Appendix to the respondents' Memorandum Suggesting that the Cause Is Moot. In summary, the Acting Secretary of Defense, on that date, signed a Finding and Order in which he found that "the requested clearance of Charles Allen Taylor is in the national interest and I so order, hereby superseding all previous orders in this case." On the same date, the Defense Department, by letter, advised petitioner, his counsel, the Commander of the Air Material Command, and the Bell Aircraft Corporation that that determination had been made and that all previous determinations in petitioner's case were thereby superseded. As indicated in the General Counsel's letter of January 6, 1959, to petitioner's counsel, the determination by the Acting Secretary on December 31st expunged all previous findings in the case as if they had never been rendered.

On February 24, 1959, this Court entered an order postponing further consideration of the respondents' suggestion of mootness to the hearing of the case on the merits.

ARGUMENT

I

By an order dated December 31, 1958, the Acting Secretary of Defense set aside the determination that petitioner's access to classified defense information was not clearly consistent with the interests of national security, granted petitioner the security clearance requested by his employer, and expunged all prior findings in the case as if they had never been rendered. In our Memorandum Suggesting that the Cause Is Moot, and in our memorandum in reply to petitioner's opposition to that suggestion, to which the Court is respectfully referred, we develop at length the reasons why, under this Court's established practice, that order has rendered the cause moot. The judgment of the District Court should therefore be vacated and the cause should be remanded with directions to dismiss the complaint on that ground.

In our Memorandum in Reply to Petitioner's Opposition to the Suggestion of Mootness (pp. 4–9), we pointed out that the Defense Department regulations would be formally amended in the near future to incorporate a general change in the Industrial Security Program put into effect by the Acting Secretary's memorandum to the Assistant Secretary of December 31, 1958. Pursuant to that memorandum, the level of classified information to which access is sought, as well as the derogatory information in a particular case, must be taken into account in determining whether or not a security clearance should be granted. The

amendment to the regulations is now being finally reviewed and will be filed with the Court as soon as it is issued.

II

If the cause has not been rendered moot, the judgment of the District Court should be affirmed for the reasons stated in the respondents' brief in *Greene* v. *McElroy*, No. 180, this Term. In that brief we show that the Industrial Security Program is a valid exercise of the executive power of the President to control the dissemination of military secrets to private persons. We also demonstrate that the interest of an employee of a government contractor in obtaining access to classified defense information cannot be considered "liberty" or "property" entitled to the procedural protections of the Fifth Amendment. Finally, even if the requirements of procedural due process are held applicable, we point out the considerations justifying the procedures employed in the program and why those requirements have not been violated in these cases.

CONCLUSION

For the reasons stated in our memoranda on mootness, it is respectfully submitted that the judgment of the District Court should be vacated and the cause remanded with directions to dismiss the complaint as moot.

If the cause is not held moot, it is respectfully submitted, for the reasons stated in our brief in *Greene*

v. *McElroy*, No. 180, this Term, that the judgment of the District Court should be affirmed.

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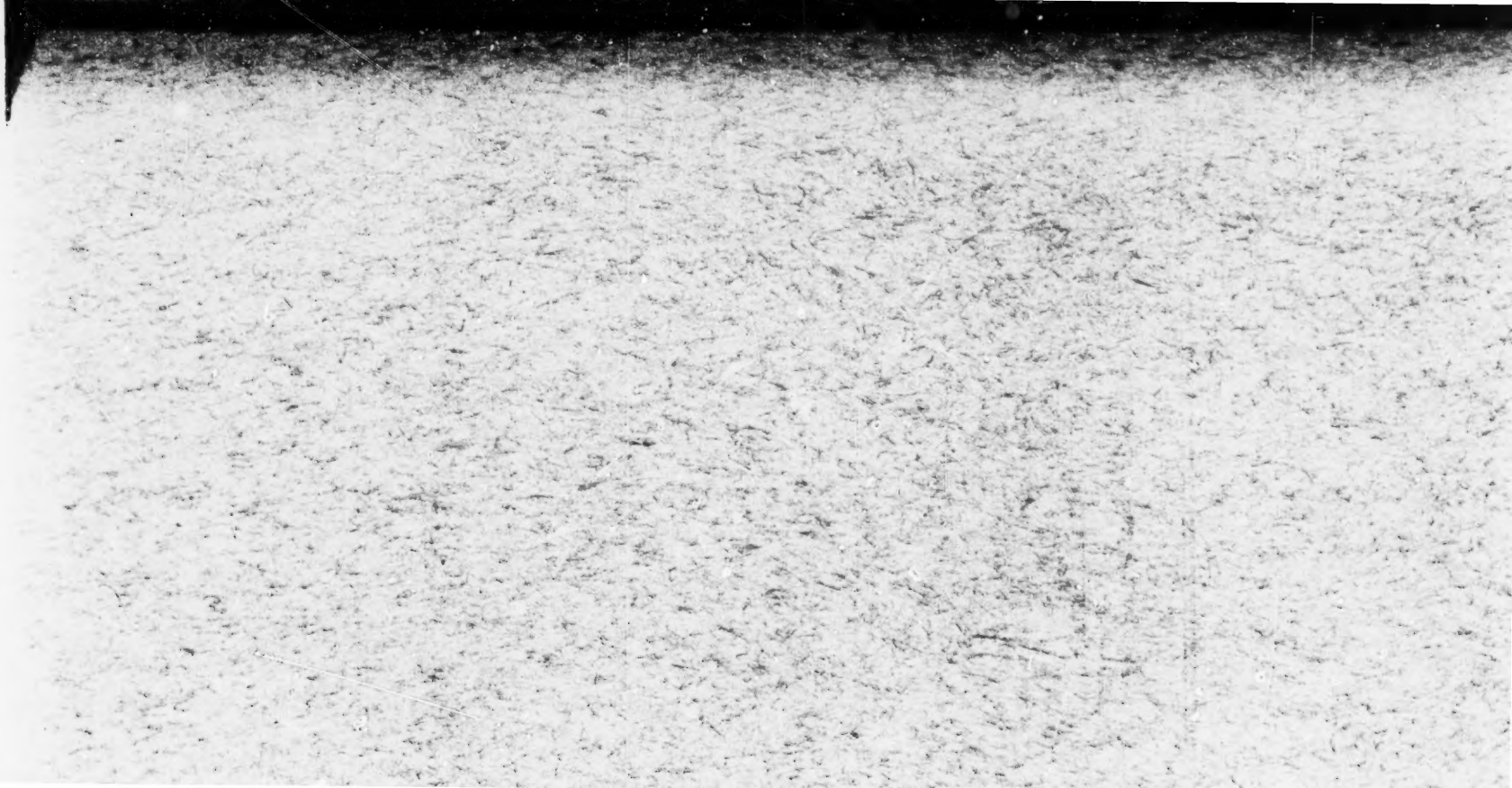
MARCH 1959.

U. S. GOVERNMENT PRINTING OFFICE: 1959



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Office-Supreme Court, U.S.
FILED
MAR 24 1959
JAMES R. BROWNING, Clerk

No. 504

In the Supreme Court of the United States

OCTOBER TERM, 1958

CHARLES ALLEN TAYLOR, PETITIONER

v.

NEIL MCELROY, A. TYLER PORT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENTS

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D.C.

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SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENTS

In the Brief for the Respondents (pp. 23–24), it was noted that there was pending an amendment to the industrial security regulations which would require that the level of classified information to which access is sought (Confidential, Secret, or Top Secret) be taken into account in determining whether such access is clearly consistent with the interests of national security. On March 19, 1959, the Acting Secretary of Defense approved, effective immediately, Change No. 3 to Department of Defense Directive 5220.6, formally adopting that amendment. In the Appendix to this Memorandum, filed pursuant to Rule 41(5) of the Rules of this Court, we have repro-

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duced the complete text of the Directive as thus amended. The new matter added by the amendment is italicized and that deleted is shown in brackets (see ¶¶ 3(b), 12, 13(a), 17(d), 20(e)).

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

MARCH 1959.

APPENDIX

Department of Defense Directive No. 5220.6 (20 Fed. Reg. 1553), amended by Change No. 3, effective March 19, 1959, provides:

INDUSTRIAL PERSONNEL SECURITY REVIEW REGULATION

SECTION I

GENERAL

1. *Purpose.* This regulation prescribes the uniform standard and criteria for determining the eligibility of contractors, contractor employees, and certain other individuals as set forth herein, to have access to classified defense information. It also establishes the administrative procedures governing the disposition of all cases in which a military department, or activity thereof, has made a recommendation or determination (a) with respect to the denial, suspension or revocation of a clearance of a contractor or contractor employee, and (b) with respect to the denial or withdrawal of authorization for access by certain other individuals.

2. *Definitions.* For the purpose of this regulation:

a. The term "contractor" means an industrial, educational, commercial, or other entity which has executed a contract or a Department of Defense Security Agreement (DD Form 441) with a Department of Defense activity.

b. The term "contractor employee" means any United States citizen or immigrant alien who is an official or employee of a contractor.

c. The term "clearance" means an administrative determination, in accordance with approved policy, that a contractor or contractor employee is eligible to have access to classified information of specified categories classified in accordance with Executive Order 10501 which is necessary for the accomplishment of the particular missions established by the military departments or activities thereof. A clearance is an administrative determination that the granting of such approval is clearly consistent with the interests of the national security. In the case of a contractor, a clearance is an approval for the contractor involved to have access to specified categories of classified information necessary in connection with the bidding, negotiation, award, performance, or termination of contracts with a military department or activities thereof which involves access to such information. In the case of a contractor employee, a clearance is an approval for the employee to have access to specified categories of classified information necessary for the performance of his work with a particular contractor on contracts with a military department or activity thereof which involve access to such information.

3. *Policy.*

a. While the Department of Defense will assume, unless information to the contrary is received, that all contractors and contractor employees are loyal to the Government of the United States, the responsibilities of the military establishment necessitate vigorous application of policies designed to minimize the security risk incident to the use of classified information by such contractors and contractor employees. Therefore, adequate measures will be taken to provide continuing assurance that no contractor or contractor employee will be granted a clearance if available infor-

mation indicates that the granting of such clearance may not be clearly consistent with the interests of the national security. At the same time, every possible safeguard within the limitations of national security will be provided to ensure that no contractor or contractor employee will be denied a clearance without an opportunity for a fair hearing.

b. The denial or revocation of a clearance in and of itself does not necessarily carry any implication that the individual is disloyal to the United States. Denial or revocation *of a clearance for access to classified information of a specific classification category or categories* results from a determination that the granting of a clearance is not clearly consistent with the interests of the national security. Such a determination would, of course, be made in the case of a disloyal individual. However, there are many other reasons, unrelated to loyalty, which may result in such a determination and thus require the denial or revocation of a clearance. Since a clearance relates only to access to classified defense information, the denial or revocation of a clearance to a contractor or contractor employee does not preclude his participation in unclassified work.

4. *Release of Information.* All personnel in the Program will comply with applicable directives pertaining to the safeguarding of classified information and the handling of investigative reports. No classified information, nor any information which might compromise investigative sources or methods or the identity of confidential informants, will be disclosed to any contractor or contractor employee, or to his lawyer or representatives, or to any other person not authorized to have access to such information. In addition, in a case involving a contractor employee the

contractor concerned will be advised only of the final determination in the case to grant, deny, or revoke clearance, and of any decision to suspend a clearance granted previously pending final determination in the case. The contractor will not be given a copy of the Statement of Reasons issued to the contractor employee except at the written request of the contractor employee concerned.

5. *Program.* There is hereby established the Industrial Personnel Security Review Program, consisting of the following elements:

a. The Office of Industrial Personnel Security Review.

b. The Industrial Personnel Security Screening Board (hereinafter called the Screening Board).

c. The Industrial Personnel Security Hearing Boards (hereinafter called the Hearing Boards).

d. The Industrial Personnel Security Review Board (hereinafter called the Review Board).

6. *Scope of Program.*

a. The procedures established in this regulation will be applicable to all cases in which:

(1) An activity of a military department has recommended that the clearance of a contractor or contractor employee be denied or revoked;

(2) An activity of a military department has suspended a clearance of a contractor or contractor employee;

(3) An activity of a military department has denied or withdrawn authorization for access to classified information to an individual, other than an immigrant alien or foreign national, who is not an official or employee of a contractor nor of the Government, but whose access as a recurrent visitor is considered necessary by a contractor and who falls within categories established by the Director under this subparagraph; or

(4) Action is requested by the head of the military department concerned, or by the Secretary of Defense.

b. Once a clearance has been suspended, an authorization for access denied or withdrawn, or a Statement of Reasons issued, these procedures will be applicable to individuals even if their employment has been terminated.

c. Except at the request of the Secretary of a military department concerned, or the Secretary of Defense, determinations will not be made under the Program in cases:

(1) Involving access to research, development and production of cryptographic equipment;

(2) Originating outside the continental limits of the United States, its territories, its possessions, and Puerto Rico;

(3) Involving denial, suspension or revocation of clearance of a contractor on grounds pertaining solely to the physical elements of security;

(4) Involving solely a determination under the provisions of Section 10(j), Act of July 2, 1926 (44 Stat. 787, 10 U.S.C. 310(j)); and

(5) Involving contractors which are under foreign ownership, control or influence.

SECTION II

ORGANIZATION

7. a. *Office of Industrial Personnel Security Review.*

1. The Office of Industrial Personnel Security Review will be headed by a civilian Director appointed by the Secretary of Defense after consultation with the Secretaries of the Military Departments. The Director shall be responsible to the Secretary of Defense

and the Secretaries of the Army, Navy, and Air Force, for administering the Industrial Personnel Security Review Program, including its constituent boards. He will be responsible for ensuring that the Screening, Hearing, and Review Boards are provided with such advice, assistance, and personnel, including legal and security advisors, as he considers necessary to enable the Boards properly to carry out their functions under this Program. He will have such professional, technical, and clerical staff as he may require to carry out his responsibilities, as set out herein, and such other related responsibilities as may be prescribed. The Director is authorized to obtain information, assistance, and advice directly from any activity of the Department of Defense, and, in accordance with established policies, from other agencies of the Government. The Director will bring to the attention of the Secretary of Defense and the Secretaries of the Military Departments any case or significant development which, in his judgment, warrants their attention. He shall prepare monthly reports on the case loads of the boards and the status of cases pending before the boards. The Director may issue such supplemental instructions, not inconsistent with this regulation, as may be desirable for the administration and efficient operation of this Program, including rules for the processing of cases, the conduct of screenings, hearings and reviews, and for guidance in the application of the standard and criteria set forth in Section III.

2. The Director, in consultation with appropriate security offices, will develop such implementing procedures as are necessary to safeguard the security of classified information and investigative reports made available to any element of the Program.

3. The Office of Industrial Personnel Security Review will be located in the Pentagon and will be supported administratively by the Office of the Secretary of Defense. The military departments will make appropriate allocations of funds, military and civilian personnel, and personnel spaces.

4. Communications will be addressed to the Director, Office of Industrial Personnel Security Review, The Pentagon, Washington 25, D.C.

b. *Department of the Army.*

The Department of the Army will have operational control and supervision over the Central Index Personnel and Facility Security Clearance File (hereinafter called the Central Index File). The complete files of the records of cases processed by the Army-Navy-Air Force Personnel Security Board, the Industrial Employment Review Board, the Eastern, Central, and Western Industrial Personnel Security Boards, and the Boards established by this regulation shall be maintained as a part of the Central Index File.

8. *Industrial Personnel Security Screening Board.*

a. The Screening Board will be located in the Office of Industrial Personnel Security Review and will be responsible for the performance of the duties and functions hereinafter prescribed.

b. The Secretary of each military department will appoint one or more members, military or civilian, to the Screening Board, as the case load requires. Any three members so appointed, one from each military department, will constitute a quorum-panel so that more than one panel may be convened at the same time. The Director will designate one member to serve as Chairman of the Screening Board.

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c. The Screening Board will have jurisdiction over all cases which are referred to it in accordance with this regulation.

9. *Industrial Personnel Security Hearing Boards.*

a. There are hereby established three Hearing Boards to be known as the New York, the Chicago and the San Francisco Industrial Personnel Security Hearing Boards and to be located in such cities respectively. Additional Hearing Boards may be established by the Director with the approval of the Secretaries of the Army, Navy and Air Force. Panels of existing Hearing Boards, convened at other locations, will be utilized when necessary to ensure prompt and convenient hearings. Each Hearing Board will be responsible for the performance of the duties and functions hereinafter prescribed.

b. The Secretary of each military department will appoint one or more members, military or civilian, to each Hearing Board, as the case load requires. Appropriate local commanders designated by each Secretary will submit nominations through the Director, who will review the qualifications of each nominee and make an appropriate recommendation to the Secretary concerned. In the letters submitting the nominations the designated commander will include a statement that in his personal opinion the nominees are persons of responsibility and are of mature judgment and balance who can be counted upon to proceed in a fair and judicial manner. The Director will designate one civilian member to serve as Chairman of each Board. Any three members, one from each military department, and including at least one civilian, will constitute a quorum-panel so that more than one panel may be convened at the same time, if required.

c. Each Hearing Board will have jurisdiction to

hear and determine all cases referred to it in accordance with this regulation.

d. The respective Hearing Boards will be located as indicated in subparagraph a. of this paragraph, but may convene at such locations or commands as the Director deems appropriate and convenient.

e. (1) Except as provided in subparagraph f. of this paragraph, the Hearing Boards will be supported administratively by the following military commanders:

New York Industrial Personnel Security Hearing Board: Commanding General, First Army.

Chicago Industrial Personnel Security Hearing Board: Commander, Air Materiel Command.

San Francisco Industrial Personnel Security Hearing Board: Commandant, 12th Naval District.

(2) Each of the above-named commanders will be responsible for the administration of the Board located within his command and for the development of implementing procedures to safeguard classified information made available to the Board. Each commander will appoint an Executive Secretary, a Security Advisor, and a Legal Advisor, and will make available such other personnel as may be required by the Director to assist in administering each Hearing Board. The Executive Secretary will be responsible for establishing and maintaining necessary administrative services, including equipment, supplies, files and records; processing of correspondence; reviewing the files for completeness; docketing the cases; and setting an approved time and place for hearing. The Security Advisor and the Legal Advisor will furnish advice and assistance to the Board.

f. Whenever, pursuant to direction of the Director, a panel of a Hearing Board established under subparagraph a. of this paragraph is convened at any of the following named locations, the commanders named, respectively, will provide or arrange for the administrative support needed by such Hearing Board panel in order to discharge its official business at such locations:

Alaska: Commander, Alaskan Air Command.

Virgin Islands, Canal Zone, and Puerto Rico: Commanding General, United States Army, Caribbean.

Guam, American Samoa, Wake, Midway, Guano Islands and Hawaii: Commandant, 14th Naval District.

g. As a verbatim transcript will be required of each hearing before a Hearing Board, it is the responsibility of each of the above-mentioned commanders to provide the necessary personnel and facilities for the prompt making of such transcripts.

h. Where a panel of a Hearing Board is convened at a location or command outside the jurisdiction of the above-mentioned commanders, the military commander designated by the Director will provide office space, facilities, clerical personnel for each hearing and for the prompt making of a verbatim transcript thereof.

10. *Industrial Personnel Security Review Board.*

a. The Review Board will be located in the Office of Industrial Personnel Security Review and will be responsible for the performance of the duties and functions hereinafter prescribed.

b. The Secretary of each military department will appoint one or more members, military or civilian, to the Review Board as the case load requires. The Director will designate one member to serve as Chair-

man of the Review Board. Any three members so appointed, one from each military department, will constitute a quorum-panel so that more than one panel may be convened at the same time. One of the members of each quorum-panel must be a qualified lawyer and each quorum-panel will include at least one civilian.

c. The Review Board will have jurisdiction over all cases referred to it in accordance with this regulation.

11. *Security Clearance of Nominees.*

No person will be appointed Director, member or alternate, Executive Secretary, Security Advisor, or Legal Advisor of any Board established under this Program, until such person has been granted a Top Secret security clearance based on a background investigation.

SECTION III

STANDARD AND CRITERIA

12. *Standard for Denial of Clearance.* Clearance *for access to classified information of a specific classification category or categories* shall be denied or revoked if it is determined, on the basis of all the available information, that access to classified information by the person concerned is not clearly consistent with the interests of the national security.

13. *Criteria for Application of Standard in Cases Involving Individuals.*

a. The activities and associations listed below which may be the basis for denial or revocation of clearance *for access to classified information of a specific classification category or categories* are of varying degrees of seriousness *depending upon all the factors*

in a particular case. Therefore, the ultimate determination of whether *such* clearance should be granted or continued must be an over-all common-sense one, based on all available information.

(1) Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting, another to commit or attempt to commit any act of sabotage, espionage, treason or sedition.

(2) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(3) Advocacy of use of force or violence to overthrow the Government of the United States, or of the alteration of the form of government of the United States by unconstitutional means.

(4) Membership in, or affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group, or combination of persons which is totalitarian, Fascist, Communist, or subversive, or which has adopted, or shows, a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of government of the United States by unconstitutional means.

(5) Intentional, unauthorized disclosure to

any person of classified information, or of other information, disclosure of which is prohibited by law.

(6) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(7) Participation in the activities of an organization established as a front for an organization referred to in subparagraph (4) above when his personal views were sympathetic to the subversive purposes of such organization.

(8) Participation in the activities of an organization with knowledge that it had been infiltrated by members of subversive groups under circumstances indicating that the individual was a part of, or sympathetic to, the infiltrating element or sympathetic to its purposes.

(9) Participation in the activities of an organization referred to in subparagraph (4) above in a capacity where he should reasonably have had knowledge of the subversive aims or purposes of the organization.

(10) Sympathetic interest in totalitarian, Fascist, Communist, or similar subversive movements.

(11) Sympathetic association with a member, or members, of an organization referred to in subparagraph (4) above. (Ordinarily, this will not include chance or occasional meetings, nor contacts limited to normal business or official relations.)

(12) Currently maintaining a close continuing association with a person who has engaged

in activities or associations of the type referred to in subparagraphs (1) through (10) above. A close continuing association may be deemed to exist if the individual lives at the same premises as, frequently visits, or frequently communicates with such person.

(13) Close continuing association of the type described in subparagraph (12) above, even though later separated by distance, if the circumstances indicate that renewal of the association is probable.

(14) Willful violation or disregard of security regulations.

(15) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.

(16) Any deliberate misrepresentations, falsifications, or omission of material facts from a Personal Security Questionnaire, Personal History Statement, or similar document.

(17) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug, addiction, or sexual perversion.

(18) Acts of a reckless irresponsible or wanton nature which indicate such poor judgment and instability as to suggest that the individual might disclose classified information to unauthorized persons, or otherwise assist such persons, whether deliberately or inadvertently, in activities inimical to the security of the United States.

(19) Any illness, including any mental condition, of a nature which, in the opinion of competent medical authority, may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.

(20) Any facts which furnish reason to believe that the individual may be subjected to

coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.

(21) The presence of a spouse, parent, brother, sister, or offspring in a nation whose interests may be inimical to the interests of the United States, or in satellites or occupied areas of such a nation, under circumstances permitting coercion or pressure to be brought on the individual through such relatives.

(22) Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a Congressional or legislative committee, or Federal or State court or other tribunal, regarding charges of his alleged disloyalty or other misconduct.

b. Legitimate labor activities shall not be considered in determining whether clearance should be granted or continued.

14. *Criteria for Application of Standard in Cases Involving Contractors.* The granting or continuing of a facility clearance to a contractor is not clearly consistent with the interests of the national security if the clearance of an officer, director, owner, or key employee of the contractor, who is required to be cleared in connection with a facility security clearance has been, or would be, denied under the standard and criteria set forth in paragraphs 12 and 13 above.

SECTION IV

PROCESSING OF CASES

15. *Emergency Action.* In accordance with existing directives, activities of military departments will not deny a clearance to a contractor or contractor employee, and ordinarily will not suspend a previously granted clearance. However, in exceptional

cases officials authorized by the military department concerned may suspend a clearance previously granted to a contractor employee (but not a clearance granted to a facility) when, in the opinion of the authorized official, the contractor employee's continued access to classified information, pending action by the Screening Board, would constitute an immediate threat to the security interests of the United States.

16. *Forwarding Cases.* Activities of military departments will forward to the Director all cases prescribed in paragraph 6a above, together with the complete file, including the recommendation in the case, the reasons therefor, and all other available information and material relevant to a determination in the case. On receipt of the file, the Director, after ensuring that it has been properly prepared and transmitted, will forward it to the Screening Board for appropriate action.

17. *Initial Adjudication Procedures (Screening Board Action).*

a. The Screening Board will review each case referred to it by the Director and will determine in accordance with the standard and criteria set forth in Section III whether the reported information warrants (1) the granting or continuing of a clearance or (2) further processing as set forth below. If an emergency suspension of clearance has already been effected pursuant to paragraph 15, the Board will review such action to determine its propriety.

b. With respect to any case pending before it, the Screening Board may request the Director to:

(1) Request further investigation, specifying the particular points on which the Board feels its information is not adequate.

(2) Issue to the person concerned such written interrogatories as the Board may deem desirable.

(3) Arrange for an interview with the person concerned.

c. The Screening Board may, with respect to any case pending before it, determine at any time that an existing clearance should be suspended. Upon any such determination, the Director will notify the person concerned, the contractor, the security office of the cognizant military department and the agency which forwarded the case to him.

d. If the Screening Board determines that a clearance *for access to classified information of a specific classification category or categories* should be granted or continued in effect, it will prepare its finding in the form set forth in paragraph 20e. The Director will notify the activity which forwarded the case to him of the determination and instruct it to effect the clearance.

e. If the Screening Board concludes on the basis of the information available to it and in accordance with the standard and criteria set forth in Section III that the case does not warrant a security finding favorable to the person concerned, it will prepare a Statement of Reasons. The Statement of Reasons will be as specific and in as great detail as, in the opinion of the Board, security considerations permit, in order to provide the person concerned with sufficient information to enable him to prepare his defense. Whenever the Board issues a Statement of Reasons, it will suspend any clearance previously granted to the person concerned.

f. The Director will forward to the person concerned, by registered mail with a request for a return receipt signed "by addressee only," the Statement of Reasons and a copy of this regulation. He will also inform the person concerned of his clearance status

pending final determination in his case and of his rights:

(1) To answer the Statement of Reasons in writing under oath or affirmation and to submit such statements or affidavits by third parties or other documentary evidence as he may desire; and

(2) To appear, at his request, before a Hearing Board in person and/or by counsel or representative of his own choosing and to present evidence in his behalf including testimony of witnesses. The Director will also inform him that his clearance will be denied or revoked finally without further action unless, within ten calendar days after he receives his notice, he either submits the written material as described in subparagraph (1), requests a hearing, or requests the Director for additional time in which to answer.

g. If, within the time authorized, the person concerned:

(1) Requests a hearing, the Director will forward the complete file to the Executive Secretary of the Hearing Board which the Director shall designate;

(2) Submits written material pursuant to subparagraph f(1) above but does not request an opportunity to appear at a hearing, the Director will forward the complete file either to a Hearing Board for determination on the basis of the file or directly to the Review Board for action in accordance with paragraph 22.

(3) Does not reply, the Director will instruct the activity which forwarded the case to him to deny or revoke finally the clearance, as appropriate, and will also advise the person concerned.

h. All determinations by the Screening Board will be made in executive session and will be in writing with a statement setting forth the basis for its action.

Favorable determination shall be by unanimous vote. No security advisor or legal advisor will be present when the Board deliberates and reaches its determination.

18. *Action by Hearing Board.*

a. On receipt of the file, the Executive Secretary of the Hearing Board, after consulting with the Chairman, will set a time and place for the hearing and inform the person concerned thereof. The hearing will be held as soon as practicable, allowing the person concerned a reasonable time within which to prepare his case and obtain witnesses. The Executive Secretary will also inform the person concerned that any further answer to the Statement of Reasons, or additional statements, affidavits or other documentary material he may care to file should be submitted directly to the Executive Secretary.

b. Each individual case file referred to a Hearing Board will be studied, prior to the hearing, by each Board member who is to participate in the determination of the case, so that the Board will be able to conduct the hearing in an intelligent manner. Board members must bear in mind constantly when studying the file prior to the hearing that the investigative reports, Statement of Reasons, and other information in the file represent an incomplete presentation of the case, since the person concerned may not yet have presented his entire defense. Accordingly, Board members should not form any premature conclusions as to the eventual determination of the case.

c. The Board may, on its own motion, request the attendance of such witnesses as it deems appropriate. Invitations should state the time and place where the hearing will be held and that the Government cannot pay witness fees or reimbursement for travel or other expenses. Employees of activities of the Department

of Defense who are invited to appear as witnesses will be encouraged to attend and no charge to annual leave will be made for attending.

d. If a person who has requested an opportunity to appear fails to appear at the time and place set for the hearing or at any postponement thereof and has not requested the Hearing Board to determine his case on the basis of the file, including any written material he may have submitted, the Executive Secretary will return the complete file to the Director without further action by the Hearing Board. The Director will then take action under paragraph 17g(3).

19. *Conduct of Hearings.*

a. Hearings are designed to accomplish two major purposes: (1) to permit the person concerned to present evidence in his behalf, and (2) to ascertain all the relevant facts in the case to aid in reaching a fair and impartial determination. Accordingly, such hearings are not to be conducted with the formality of a court proceeding, but rather as administrative inquiries held for the purpose of affording the person concerned an opportunity to be heard and to permit the Board to inquire fully into the matters related to the particular case.

b. Hearings will be conducted in an orderly manner and in an atmosphere of dignity and decorum. They may be attended only by the members of the Board participating in the hearing, the person concerned and his lawyer or representatives, authorized personnel of activities of the Department of Defense, necessary clerical personnel, and such witnesses as the Government or the person concerned may desire. The person concerned and his lawyer or representatives have the right to be present throughout the hearing. Unless the Board rules otherwise, a witness may be present only when he is testifying.

c. The Security Advisor will be present at the hearing to furnish advice and assistance to the Board whenever required. As a matter of standard procedure a Legal Advisor will also be present at the hearing to furnish legal advice to the Board and to assist it in making certain that the record is complete. Both the Security Advisor and the Legal Advisor may interrogate witnesses who appear before the Board (including the person concerned, if he chooses to testify). In the event the person concerned appears without a lawyer, the Legal Advisor will advise him of his rights and assist him with respect to procedure. No function performed by the Legal Advisor, however, will relieve the Board of its responsibilities for ensuring that the record is complete, that the person concerned is advised of his rights, and that all pertinent information, both favorable and unfavorable, is considered. In the discretion of the Board, both the Security Advisor and the Legal Advisor may attend executive sessions of the Board, but they will not be present when the Board deliberates its findings and reaches its determination.

d. Strict rules of evidence need not be followed. The Board may admit in evidence any material, either oral or written, which in the minds of reasonable men is of probative value in determining the issues involved, but reasonable bounds with respect to relevancy, materiality and competency of evidence will be maintained. Efforts shall be made to obtain the best evidence as to a particular issue. Hearsay evidence may be admitted without regard to technical rules of admissibility and shall be accorded such weight as, in the opinion of the Board, the circumstances warrant.

e. Hearings will be called to order by the Chairman, who shall make an opening statement substantially as follows:

> The ---------- Industrial Personnel Security Hearing Board appointed by the Secretaries of the Army, Navy and Air Force is now ready to proceed with the hearing in the case of (name of person concerned). This is not a court of law and strict rules of evidence and court procedure need not be followed. This is an administrative hearing held for the purpose of affording you an opportunity to be heard and to permit the Board to inquire fully into the matters related to your case. You have the right to be represented by a lawyer or other representative and to present witnesses and other evidence in your behalf. You can assist the Board in arriving at a fair and just determination in your case by giving full and frank answers to all questions the Board may have and by confining your attention to matters related to your case. The transcript to be made of this hearing will not include all material in the file of the case in that it will not include reports of investigation conducted by the Federal Bureau of Investigation or other investigative agencies which must be held in confidence. Neither will it contain information which might reveal the identity of confidential informants or the source of confidential evidence. The transcript will contain only the statements made, testimony given and exhibits received in open sessions of this hearing. A copy of this transcript, less exhibits, will be furnished you or your representative without cost if you request it.

f. Following the opening statement the Chairman will read the Statement of Reasons and inform the person concerned that, if he desires, he or his lawyer

or representative may then make a general opening statement. Each witness, before testifying, will be informed that Section 1001 of Title 18, United States Code, makes it a criminal offense, punishable by a maximum of five (5) years imprisonment, $10,000 fine, or both, to make a false statement or representation to any Department or Agency of the United States as to any matter within the jurisdiction of any Department or Agency of the United States.

g. Normally Government witnesses, if any, will then be heard.

h. The person concerned will then present his case, including his own testimony (if he desires to testify), testimony of other witnesses and written evidence.

i. The Board will, when appropriate, amend the Statement of Reasons to conform it with the information available. When such amendments are made, the Board may grant the person concerned such additional time as it deems appropriate to answer such amendments and to secure and present evidence concerning them.

j. The Board may recess the hearing at any time on the request of the person concerned or upon its own motion. When it desires, the Board may meet in executive session but no transcript of executive sessions will be made.

k. Before the Board adjourns the hearing, the Chairman will ask the person concerned whether he desires additional time to secure and present additional evidence or to submit a brief. If the person concerned does desire to present such additional material, the Board shall determine the time within which it must be presented and the form in which it will be received. The Chairman will also advise the person concerned that announcement of the de-

termination in his case will be made by the Director, Office of Industrial Personnel Security Review.

l. A verbatim transcript (in quintuplicate) will be made of the hearing and such transcript will become a permanent part of the file. The person concerned or his designated representative will be furnished without cost one copy of the transcript, less the exhibits, upon his request. The transcript will be reviewed by the Board in consultation with the Security Advisor prior to release to ensure that it contains no classified information.

m. If the person concerned or his lawyer or representative desires to submit corrections in the transcript to the Board, he will note the corrections on a separate statement, designating the page and line. The statement of corrections must be filed within the time set by the Board. The Board will determine what corrections are allowable, will enter on the transcript by marginal notation the corrections which are allowed, and will enter on the statement filed by the person concerned the corrections which are rejected. This statement will be made a permanent part of the record. The Board in its discretion may call upon the person concerned, or his counsel or representative, for a discussion of the corrections prior to its determination thereon. Corrections will be allowed solely for the purpose of conforming the transcript to the actual testimony.

20. *Hearing Board Determination.*

a. As promptly as possible after the hearing, the Board shall meet in executive session and after full consideration of the complete file, including all evidence, arguments, and briefs in the case, it will reach its determination in accordance with the standard and criteria set forth in Section III.

b. The Board will take into consideration the fact that the person concerned may have been handicapped in his defense by the non-disclosure to him of classified information or by his lack of opportunity to identify or cross-examine persons constituting sources of information. Accordingly, it will weigh each item of derogatory information carefully in the light of its recency and relative seriousness, the amount and quality of supporting evidence, the attendant circumstances, whether the item was given under oath or affirmation, whether or not it is relevant to the Statement of Reasons, and whether or not the person concerned has had an opportunity to rebut it.

c. The determination, which shall be reached by majority vote, shall be signed by the members and made a permanent part of the record in the case.

d. The determination shall include a finding with respect to each of the allegations set forth in the Statement of Reasons. Each such finding shall be followed by a detailed discussion of the evidence which the Board has relied upon in making such finding.

e. The determination shall also include a statement in the following form:

> [The Board determines that on all the information available to it the granting of clearance to _____ for access to classified information (is) (is not) clearly consistent with the interests of the national security.]
>
> (1) *The Board determines that on all the information available to it the granting of clearance to _____ for access to information classified up to and including _____ is clearly consistent with the interests of national security, or*
>
> (2) *The Board determines that on all the information available to it the granting of*

clearance to _____ for access to information classified _____ (Top Secret or Secret) is not clearly consistent with the interests of national security. The Board determines, however, that the granting of access to information classified up to and including _____ (Secret or Confidential) is clearly consistent with the interests of national security, or

(3) *The Board determines that on all the information available to it the granting of clearance to _____ for access to classified information at any level is not clearly consistent with the interests of the national security.*

This statement shall be followed by a discussion of why the aforementioned findings with respect to the allegations justify the determination.

f. If the decision is not unanimous, a signed minority opinion shall be filed, setting forth the reasons for the dissent in the manner prescribed in subparagraphs d and e above.

21. *Procedure After Determination by the Hearing Board.*

a. After the Hearing Board has considered a case and reached a determination, the Executive Secretary promptly will forward the complete file to the Director who will examine it for completeness and compliance with the procedures set forth in this regulation. If the Director is not satisfied with the state of the record in the case, he may return the case to the Hearing Board for further action. In any case in which the Director is satisfied with the record and in which the determination of the Hearing Board is unanimous, he may announce that determination as the final determination of the case. He will notify the person concerned, the activity initially referring the case, and other interested agencies of this deter-

mination. The Director also will issue instructions for the granting, continuing, denying or revoking of clearance in accordance with the determination. If the determination of the Hearing Board is not unanimous, the Director shall forward the case to the Review Board. He also may forward to the Review Board cases which present novel issues or unusual circumstances.

b. The determination of the Hearing Board as announced by the Director pursuant to paragraph a above shall be final subject only to:

(1) consideration by the Review Board at the request of the Director, the Secretary of Defense, or the Secretary of any military department; or

(2) reconsideration by the Hearing Board at the request of the Director on the ground of newly discovered evidence or for other good cause shown.

22. *Action by the Review Board*

a. The Review Board will review each case submitted to it on the written record and will make its determination in each case by majority vote in accordance with the standard and criteria set forth in Section III. It may adopt, modify or reverse the findings or the determination of the Hearing Board. In the event the Review Board modifies the findings or reverses the determination of the Hearing Board, the Review Board determination shall be accompanied by a discussion of the evidence and the reasons relied upon for its action. If the decision is not unanimous, a minority opinion shall be filed.

b. After the Review Board has reached its determination, the Director will notify the person concerned, the activity initially referring the case, and other interested agencies of the final determination in the case. The Director will also issue instructions for the grant-

ing, continuing, denying or revoking of clearance in accordance with the determination.

c. Determinations of the Review Board shall be final, subject only to:

(1) Reconsideration on its own motion or at the request of the person concerned, addressed through the Director, on the ground of newly discovered evidence or for other good cause shown;

(2) Reconsideration by the Review Board at the request of the Secretary of Defense or the Secretary of any military department; or

(3) Reversal by the Secretary of Defense, or reversal by joint agreement of the Secretaries of the three military departments at the request of one of such Secretaries.

SECTION V

MISCELLANEOUS

23. *Pending Cases.*

a. All cases pending before the Eastern, Central or Western Industrial Personnel Security Boards in which a Statement of Reasons has been issued before the effective date of this regulation will be processed to completion in accordance with the provisions of the Industrial Personnel and Facility Security Clearance Program approved by the Secretaries of the Army, Navy and Air Force on 4 May 1953, as amended. Promptly after each such case has been completed or closed, those Boards will forward the file to the Director for inclusion in the Central Index File.

b. All other cases pending on the effective date of this regulation will be processed under this regulation. The Eastern, Central and Western Industrial Personnel Security Boards will forward promptly to the Director files of all such cases for processing. Those Boards also will forward to the Director, for inclusion in the Central Index File, the files of all cases which have been completed or closed prior to the effective date of this regulation.

24. *Reconsideration of Prior Decisions.*

a. Decisions of the Industrial Employment Review Board and of the Appeal Divisions of the Eastern, Central and Western Industrial Personnel Security Boards which denied or revoked a clearance may be reconsidered by the Review Board at the request of the person concerned, addressed through the Director, on the grounds of newly discovered evidence or for other good cause shown.

b. Decisions of the Army-Navy-Air Force Personnel Security Board and of the Screening Divisions of the Eastern, Central and Western Industrial Personnel Security Boards which denied or revoked a clearance may be reconsidered by the Screening Board at the request of the person concerned, addressed through the Director, for good cause shown.

c. In cases where a clearance has been previously granted and an activity of a military department receives additional derogatory information which was not considered by a Board at the time it decided the case and the commander of the activity is of the opinion, after reviewing the complete file including the record of any prior proceedings, that revocation

of the prior clearance is warranted, he will forward the case to the Director, through appropriate channels, for referral to the Screening Board in accordance with paragraph 17.

25. *Notices to Counsel or Other Representatives.*

Where the person concerned designates in writing to the Director or to the Executive Secretary of a Hearing Board a lawyer or other individual to represent him in any proceeding under this regulation, such representative will be furnished a copy of all communications which are sent to the person concerned.

26. *Monetary Restitution.*

In cases where a final determination is favorable to a contractor employee, the department whose activity originally forwarded the case to the Director will reimburse the contractor employee in an equitable amount for any loss of earnings during the interim resulting directly from a suspension of clearance. Such amount shall not exceed the difference between the amount the contractor employee would have earned at the rate he was receiving on the date of suspension and the amount of his interim net earnings. No contractor employee shall be compensated for any increase in his loss of earnings caused by his voluntary action in unduly delaying the processing of his case under this regulation.

27. *Changes in Existing Directives.*

This regulation supersedes the Industrial Personnel and Facility Security Clearance Program approved by the Secretaries of the Army, Navy and Air Force on 4 May 1953, as amended, and the provisions of

any other directives which are inconsistent with this regulation.

28. *Effective Date.*

This regulation becomes effective sixty calendar days after it is approved by the Secretary of Defense.

Recommended by:

ROBERT T. STEVENS,
Secretary of the Army.

Date: February 2, 1955.

C. S. THOMAS,
Secretary of the Navy.

Date: February 2, 1955.

H. E. TALBOTT,
Secretary of the Air Force.

Date: February 2, 1955.

Approved by:

C. E. WILSON,
Secretary of Defense.

Date: February 2, 1955.

U. S. GOVERNMENT PRINTING OFFICE 1955

LE COPY

Office Supreme Court, U.S.
FILED
MAR 30 1959
JAMES R. BROWNING, Clerk

No. 504

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

CHARLES ALLEN TAYLOR,
Petitioner

v.

NEIL McELROY, A. TYLER PORT,
Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR PETITIONER

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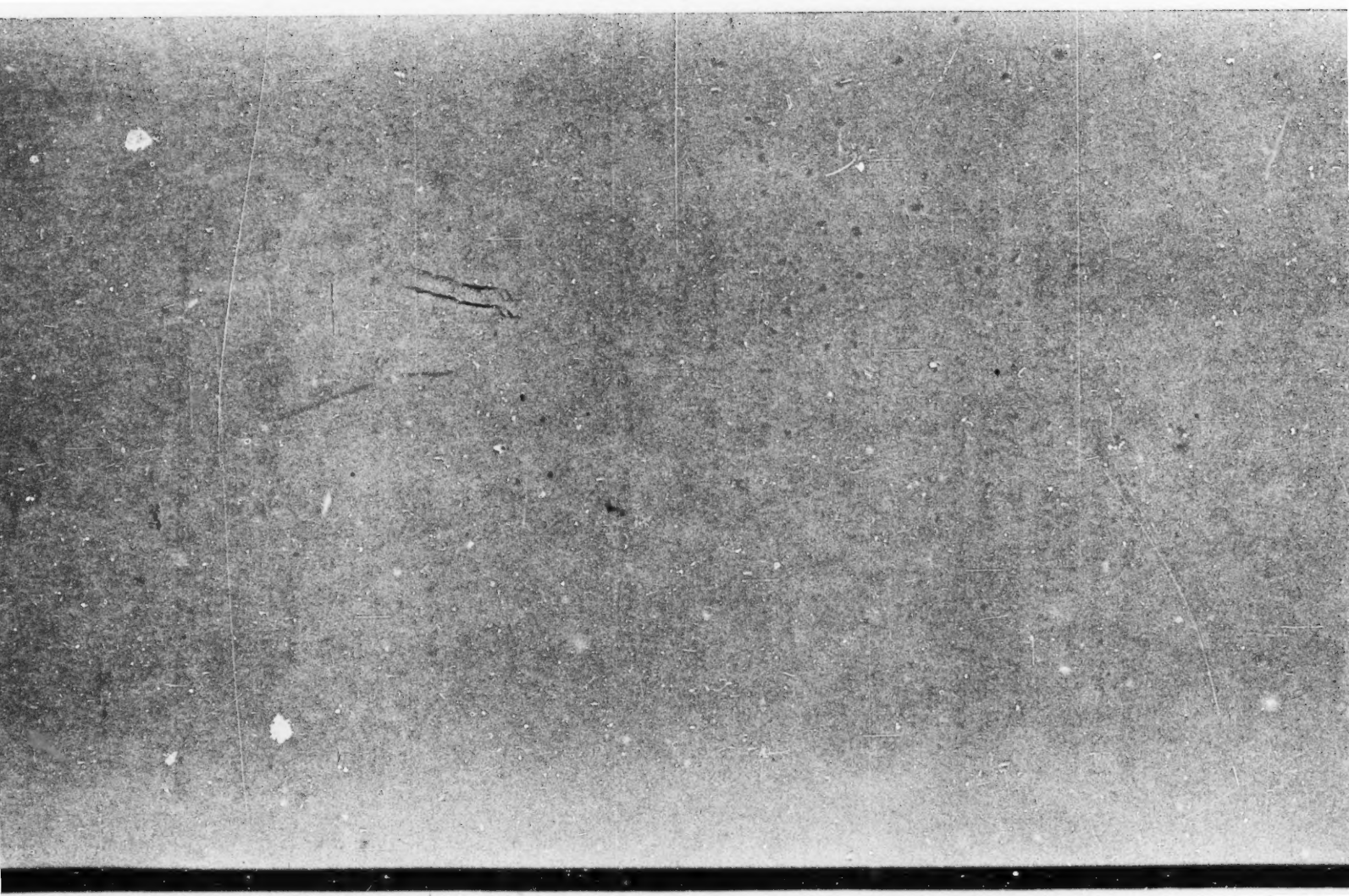

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REPLY BRIEF FOR PETITIONER

Petitioner has not been able to prepare this reply in the customary responsive manner because of the Government's unwillingness to answer petitioner's brief on the merits. Despite the fact that this Court refused to grant the Government's request that the case be declared moot and instead ordered the Government's suggestion of mootness postponed until the hearing of the case on the merits, the Government's brief totally ignores petitioner's argument on the merits, brusquely referring the Court to its brief in *Greene* without even bothering to assist the Court in

determining which of its arguments in that case are applicable here and which are not. This method of answering petitioner's brief by a curt and blanket cross-reference to the Government's brief in *Greene* not only encompasses arguments wholly inapplicable to petitioner's case,[1] but, far more significantly, omits any answer whatever to vital contentions made by petitioner. For example, the Government's brief in *Greene* fails totally to answer petitioner's argument, based on the detailed facts of his own case (Brief 29-38), that "without confrontation security hearings and determinations are inevitably unfair and wholly arbitrary" and petitioner's analysis and authorities (Brief 38-50) demonstrating that "no governmental interest is served by denial of confrontation in security proceedings." Since there is no answering Government brief to which petitioner can now appropriately respond, we limit ourselves herein to the only three Governmental contentions not fully anticipated and answered in our initial argument:

1) The Government's unprecedented argument in *Greene* (pp. 23-28) that "inherent executive power" is sufficient to support the entire Industrial Security Program without the necessity of legislative authorization;

2) The Government's equally unprecedented suggestion in *Greene* (pp. 36-40) that the Fifth and Fourteenth Amendments provide a unique protection against discrimination not available to those subjected to other forms of arbitrary governmental action;

3) The Government's reliance, in urging mootness here, upon its recent amendment to the Industrial Security Regu-

[1] See, e.g., the Government's argument in *Greene* (pp. 62-64) that Greene "made no attempt to deny the essential facts but his entire case consisted of an attempt to give his own explanation of the significance of those facts. . . ." Petitioner's case, of course, involves the exact opposite—a categorical denial of "the essential facts" of alleged Communist Party membership in 1942-43.

lation, the pertinence and effect of which the Government nowhere explains.

But before discussing each of these three points, a brief statement of the conceded facts may be helpful to the Court.

Statement of Conceded Facts

The Government does not challenge a single material fact in petitioner's statement of the case. Either by express concession or by silence the Government thus confirms petitioner's statement of the following material facts:

1. For almost 2½ years petitioner was held a security risk, with consequent loss of job, livelihood and reputation, on the basis of accusations by secret informants that petitioner had been a Communist during 1942 and 1943[2] and this entire tragedy for petitioner occurred without a single piece of evidence ever having been adduced at any proceeding to support these accusations.

2. The initial charge that petitioner had been a Communist in 1942 and 1943 and "may still have membership in the Communist Party" was overwhelmingly answered at the hearing by the sworn testimony of eleven witnesses that petitioner had in fact been an outspoken *anti-Communist* during this very period, publicly opposing the Communist line on such key issues as incentive pay and the no-strike pledge.

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[2] In its "questions presented" the Government suggests that the Defense Department's adverse determination "was made on the basis of evidence offered by petitioner and confidential information contained in government files. . . ." (Brief 2). Apparently this is only an oversight resulting from a too literal copying of the *Greene* brief, for the Defense Department's adverse security determinations (R. 52, 120) nowhere refer to the evidence offered by petitioner, and the Government has never suggested, and does not now suggest, a single piece of testimony at the "hearing" upon which the Defense Department relied in rendering its adverse decisions.

3. The amended charge—that petitioner had been a Communist in 1942 and 1943 and, in contrast to the earlier charge of possible continuing membership, had been expelled in the latter year—resulted from the secret informants changing and tailoring their stories to fit the testimony concerning petitioner's anti-Communism adduced by petitioner and his supporting witnesses at the hearing on the initial charge.

4. All of the secret informants, upon whom the 2½ years of adverse security determination rested, were casual informants and not professional undercover agents.

5. The Board never examined these secret informants, nor did the Board know their identities (including any possible past criminal or other discrediting records).

6. The Board was forced to rely on second-, third-, and fourth-degree hearsay assertions of secret informers transmitted by unknown persons.

7. Petitioner's "clearance" shortly after certiorari was granted by this Court came just two months after the Defense Department's second final adverse decision that petitioner was a perjurious ex-Communist,[3] a charge which the Government even now refuses to repudiate.

The Court is thus presented with the ugly realities of how non-confrontation operates and what it can do to a defenseless citizen in 20th Century America—a citizen for years denied his job, livelihood and reputation on the basis

[3] The Government appears to find it significant, although it nowhere indicates why, that this October 13, 1958, decision did not find that petitioner "had ever had a sympathetic interest in Communism" or "that he had lied when he denied charges to that effect" (Brief 21). But the same decision does find that petitioner's "sworn reply" and his "testimony" "were deliberately and knowingly either false or misleading" in denying that he had ever been a member of the Communist Party and in denying that he had "no knowledge of the subversive aims and purposes of the Communist Party" (R. 122). This finding appears identical with the one whose omission the Government finds "significant."

of statements by secret (and casual) informants, unknown both to petitioner and the reviewing Board, who altered their stories after being informed of petitioner's defense of opposition to the Communist Party line; a citizen whose testimony under oath rebutting every minute detail of the charge against him,[4] and corroborated by eleven forceful witnesses, is rejected as perjurious by a Board which accepts in preference the accusations of secret informants it never saw, knew, or examined. It is not surprising, on this record of indefensible injustice, that the Government makes its sole response by an elliptical cross-reference to a case involving totally different facts. But what is surprising and sad is that the Government has forsaken its normal course of confessing error when it is unwilling to defend its conduct before this Court.

I

Neither the Industrial Security Program as Such Nor its Unfair Hearing Procedure Is or Could Be Predicated Upon the "Inherent Executive Power" of the President

The Government comes very near conceding, if it does not actually concede, the argument for petitioner in *Greene* that there is no statutory authority for the Industrial Security Program. Its reliance upon the legislation providing for the organization of the defense establishment (National Security Act of 1947, 61 Stat. 495, as amended, 5 U.S.C. 171, *et seq.*), not as a statutory base for the program, but simply

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[4] We are not entirely clear just what the Government means in its Brief (p. 9, 16) when it states that petitioner's affidavits in response to the two sets of charges denied their truth "in general." Any reading of petitioner's sworn denials (R. 42, 80) and of petitioner's testimony (R. 353-412) will make crystal clear that there was nothing concerning the charge of petitioner's alleged relationship with Communism that was not specifically and categorically denied.

as "another recognition of the necessarily inherent character" of the President's authority, and its statement that "arguably" the authority for the program may be "inferred" from various other statutes cited to the Court of Appeals in *Greene*, evidences an almost total abandonment of reliance upon Congressional action as authority for the program (Gov't *Greene* Brief 26). And, what is at least equally significant, the Government totally concedes, by failing to make any answer whatever, the additional argument made by petitioner here (Brief 50-56) that, even if there could conceivably be some statutory base for an industrial security program as such, no existing statute can be deemed to authorize the unfair hearing procedure prescribed by the contested Regulation.[5]

No longer placing any real reliance upon a statutory base for the Industrial Security Program, the Government now rests the authority of the Defense Department to promulgate and operate the program squarely upon the "executive power" of the President and his power as "Commander in Chief of the Army and Navy" (Gov't *Greene* Brief 23). Several answers to this contention are readily available:

1. The Defense Department's Industrial Security Program never having been predicated upon the inherent authority of the President, the Government cannot now justify it on that basis. *Cf. Securities and Exchange Com.* v. *Chenery Corp.*, 318 U.S. 80; *Cole* v. *Young*, 351 U.S. 536,

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[5] The Government's half-hearted suggestion in its brief in *Greene* (p. 27, n. 8) that "appropriations constitute legislative ratification of the program" does not appear to be seriously advanced. The pages of the only appropriation hearing to which the Government refers do not evidence any ratification of the program as a whole, for they dealt only with a request for funds to pay lost wages to persons wrongfully held to be security risks. Hearings to obtain funds to ameliorate the unjust results of a program would hardly appear to evidence Congressional ratification or approval of the program itself, much less its unfair hearing procedure.

557 n. 20. The Government has failed to produce for this Court a single order or regulation of the Defense Department establishing or implementing this program which relies upon the inherent power of the President for its authority. Furthermore, the Report of the bipartisan Commission on Government Security, which included in its membership four appointees of the President, including two top Government officials and, at one time, an Assistant Secretary of Defense (p. iii), stated categorically that "the legal basis for the program . . . must be found in a statute which authorizes the executive branch of the Government (and the Department of Defense in particular) to establish this program" (p. 250). The Government's last minute reliance upon "inherent executive power" is eloquent evidence of the absence of just such a "legal basis" for the program as the Commission on Government Security found necessary.

2. The President has no "inherent executive power" to enact the Industrial Security Program. The creation of a permanent program to screen three million workers in defense plants to detemine their security reliability—a program involving charges, hearings, decisions, etc.—is certainly no less the exercise of a "lawmaking" function than the power to seize property, which was refused the executive by this Court in *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579.[6] Indeed, if a single *ad hoc* and emergency seizure of private property is deemed a part of the lawmaking function of Congress, the establishment of a

[6] Despite the fact that petitioners in both *Greene* and *Taylor* referred to the *Youngstown* case to anticipate any possible Governmental argument on inherent power, the Government has made no effort to distinguish the case or even to mention it. Instead, the Government places its reliance upon *United States* v. *Reynolds*, 345 U.S. 1, and *Totten* v. *United States*, 92 U.S. 105, which deal with the entirely different subject of the right to obtain or reveal secret information in the course of judicial proceedings.

permanent program screening millions of American workers would be even more clearly within the "exclusive constitutional authority" of Congress (at p. 588).

Moreover, this Court has had even more recent occasion to reject a Government contention of "inherent executive power" similar to that now being urged. In *Kent* v. *Dulles*, 357 U.S. 116, this Court invalidated passport restrictions as lacking in statutory foundation notwithstanding the Government's arguments concerning "inherent executive power." In its *Kent* brief (p. 30) the Government urged that "The Secretary's authority [over passports] finds its origin in his executive powers as the chief officer under the President in the field of foreign affairs." And after reviewing this so-called "executive power", the Government went on to conclude (at p. 32) that the basic passport statute merely stands as

> "a congressional recognition, implementation, and confirmation of an existing executive authority, rather than as a new delegation of Congressional power or a limitation or expansion of powers already possessed by the Secretary."

This Court quickly dispensed, however, with any possibility that, in the absence of statutory authority, inherent executive power could support general passport regulations and prescriptions:

> ". . . the right of exit is a personal right included within the word 'liberty' as used in the Fifth Amendment. If that 'liberty' is to be regulated, it must be pursuant to the lawmaking functions of the Congress. *Youngstown Sheet & Tube Co.* v. *Sawyer* . . ."

So here, if the liberty to retain private employment, to earn a livelihood and to enjoy an honorable reputation, is to be

regulated, it must be pursuant to the lawmaking functions of Congress.[7]

3. Even if the President had the "inherent executive power" claimed for him by the Government, that power has never been asserted by the President himself nor delegated by him to the Defense Department. Executive Order 10501, upon which the Government apparently relies as delegation (Gov't *Greene* Brief 27, n. 9)—providing for the classification of security information and its dissemination only through authorized channels—does not give the faintest intimation of a delegation of authority to establish a general program of "screening," "hearing," and "clearance" for millions of industrial workers.[8] It would certainly be inconsistent with this Court's fundamental principle of avoiding constitutional issues wherever possible, to determine the grave question whether the President has the "inherent executive authority" to promulgate and operate the Industrial Security Program in the absence of a clear assertion by and clear delegation from the President of the claimed authority. The Government has presented to this Court no such clear assertion or delegation of power. We respectfully suggest that, in the absence of the explicit Presidential exercise of so doubtful an "inherent executive power," the

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[7] Of course, even if this Court should find "inherent executive power" to establish an industrial security program, the limitations of the Fifth Amendment would restrict that power no less than they restrict the power of Congress to prescribe unfair hearing procedures. This Court cannot hold constitutional executive powers free of the limitations embodied in the Bill of Rights, for it is its duty, when two constitutional provisions may come into conflict, "so to construe the Constitution as to give effect to both provisions." *Cohens* v. *Virginia*, 6 Wheat. (19 U.S.) 264, 393. See also *Rhode Island* v. *Massachusetts*, 12 Pet. (37 U.S.) 657, 723; *North American Co.* v. *S.E.C.*, 327 U.S. 686, 704-705; *Ullman* v. *United States*, 350 U.S. 422, 428-29.

[8] The mere failure of the President to express his disapproval of the program could not, of course, amount to Presidential ratification. *Peters* v. *Hobby*, 349 U.S. 331, 345.

Government is unwarranted in asking this Court to render a decision on that vital constitutional issue.

4. In essence, the Government's argument on inherent power, like the remainder of its argument, is a request that this Court treat the Industrial Security Program as though it involved nothing more than the executive withholding of classified information from unauthorized persons. What the Government is really asking this Court to do is to close its eyes to the necessary and conceded consequences (Gov't *Greene* Brief 30, 32, 56) of the withholding of classified information under the Industrial Security Program. But petitioner's case does not involve a casual request for access to classified information simply for the sake of examining that information; it involves an individual whose most vital interests depend upon his access to classified information and upon his obtaining a fair hearing to resolve the most serious charges levelled against him by his Government.

The Government cannot obscure the far-reaching consequences of the Industrial Security Program simply by referring to "internal operations of the executive branch" (Gov't *Greene* Brief 23). There is nothing "internal" in the impact of the Government's action upon petitioner; his most elementary rights—job, livelihood, and reputation—all depend upon a fair hearing for determination of his security status. No more here than in analogous areas of constitutional adjudication can this Court be blind to the inevitable impact of governmental action upon the citizen. See *NAACP* v. *Alabama*, 357 U.S. 449; *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123. No more here than in analogous areas can this Court consider the "inherent executive power" in a vacuum, divorced from its real impact upon the liberties of American citizens. *Kent* v. *Dulles*, 357 U.S. 116 (see p. 8, *supra*).

II

The Government's Suggestion that the Fifth and Fourteenth Amendments Provide a Unique Protection Against "Discrimination" Not Available Against "Arbitrary" Governmental Action is Without Merit

The Government concedes in its *Greene* brief (p. 29) that petitioner's interest in his job, his livelihood and his reputation are sufficient to give him "standing to sue." But, the Government goes on to assert in *Greene*, even conceding that the action taken by the Defense Department "clearly affects sufficient interests to enable him to assert whatever rights he may have," Greene's interests are not sufficient to be deemed "liberty" or "property" entitled to procedural due process protections. Here, of course, the Government runs squarely into this Court's recent and definitive holdings in *Wieman* v. *Updegraff*, 344 U.S. 183, and *Slochower* v. *Board of Higher Education*, 350 U.S. 551, that procedural due process protections do apply to arbitrary dismissals from public employment and to the corollary, as petitioner pointed out in his initial brief (p. 22), that if the interest in public employment is sufficiently substantial to invoke due process protections, certainly the interest in private employment is *a fortiori* sufficient.

Faced with the necessity of finding a distinction of *Wieman* and *Slochower* at all costs, the Government tenders a theory admittedly unexpressed by any court or other authority—that those cases do not indicate that the "right" or "privilege" of public or private employment is a sufficient interest to be deemed "liberty" or "property" entitled to due process protections; rather, argues the Government, those cases are predicated upon the theory that Wieman and Slochower were the victims of *discrimination* and, as such, entitled to protection irrespective of whether

they were deprived of "liberty" or "property" in their dismissals from employment. As the Government states the proposition in *Greene:*

> "We suggest that the true explanation of the *Public Workers-Wieman-Slochower* line of cases is an evolving doctrine that the Constitution itself creates an affirmative right, regardless of the nature of the interests affected or of the protection otherwise afforded them, not to be discriminated against by state or federal government on the basis of an invidious classification. The evil condemned is the discrimination itself, and it is not essential that the governmental action affect any other legally-recognized interest apart from the right to be free from discrimination. In its procedural requirements, on the other hand, the due process clause is necessarily a purely negative command; one does not have a 'right' to have a fair hearing but only a right not to be deprived of certain kinds of interests *without* a fair hearing. Accordingly, an existing interest must be recognized independently of the due process clause before its procedural requirements become applicable" (pp. 37-38).

We respectfully suggest (i) that the *Wieman* and *Slochower* cases on their face repel the Government's argument, and (ii) that the distinction between discrimination and other forms of arbitrary governmental action is historically and logically unsound.

(i) In the *Wieman* case this Court expressly held that, whether or not "an abstract right to public employment exists . . . constitutional protection does extend to the public servant whose exclusion . . . is patently *arbitrary* or discriminatory" (at p. 192) (emphasis supplied). Although state action was involved, this Court made no refer-

ence whatever to the equal protection clause; it expressly held that the denial of Wieman's job "offends due process" (at p. 191).

In *Slochower* this Court found it to be a denial of due process to dismiss a state employee simply because he had invoked the Fifth Amendment privilege against self-incrimination before a federal legislative committee. The Court held that "the State must conform to the requirements of due process" (at p. 556) and that "the summary dismissal of appellant violates due process of law" (at p. 559). There was no faintest element of discrimination in *Slochower;* as this Court there pointed out, Slochower presented a case where "there has not been the 'protection of the individual against arbitrary action' which Mr. Justice Cardozo characterized as the very essence of due process . . ." (at p. 559). Again, although state action was involved, this Court made no reference whatever to the equal protection clause, but expressly held Slochower's dismissal "violates due process of law."

Since *Wieman* and *Slochower* themselves refute the attempted distinction that freedom from discrimination holds a unique position in our constitutional constellation not held by freedom from other forms of arbitrary governmental action, this would appear to be a sufficient answer to the Government's novel suggestion. It does, however, seem appropriate also to refer very briefly to the theoretical and historical fallacy in the Government's suggestion.

(ii) There is no principle of our jurisprudence that would warrant a preference for freedom from discrimination over freedom from other forms of arbitrary governmental action. No legal, moral or logical reason has been suggested by the Government to support its contention that protection against discrimination should be singled out and given a higher role in our jurisprudence than protection

against other forms of arbitrary governmental conduct. On the contrary, as our initial brief points out, procedural due process holds the highest possible role in our constitutional scheme (pp. 20-26). It is precisely because the procedural guarantees of due process do hold so high a status that novel procedural claims have been consistently deemed to fall within its ambit. *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123. As Mr. Justice Frankfurter there stated:

> "Due process is not confined in its scope to the particular forms in which rights have heretofore been found to have been curtailed for want of *procedural fairness*. Due process is perhaps the *most majestic concept in our whole constitutional system*" (at pp. 173-174) (emphasis supplied).

It may well be that procedural fairness is paramount even to freedom from discrimination, but it would serve no useful purpose to discuss further the relative status of these two major constitutional guarantees; what is clear is that procedural fairness has never been placed second to freedom from discrimination or any other constitutional guarantee.

Nor is the Government's reliance upon the wording of the Fourteenth Amendment well placed. It is true, of course, that the Fourteenth Amendment provides that no person shall be deprived of "life, liberty, or property, without due process of law" and that no person shall be denied "the equal protection of the laws." From this wording the Government concludes that "the latter is absolute, while the former is in terms applicable only to a deprivation of life, liberty or property" (Gov't *Greene* Brief 38). But the Government cites no legislative history of the Fourteenth Amendment indicating that the equal protection clause was thus intended to be more broadly applied than the due

process clause or that a person might be protected against discrimination under circumstances where he would not be protected against other forms of arbitrary conduct. Furthermore, and what is especially relevant to the instant case, we are here concerned with the Fifth Amendment, which contains a due process clause and no equal protection clause. The history and prime meaning of the words "due process" bespeak their application to fair process and procedure above all else. Indeed, the historical debate has not been whether protection against discrimination is *preferred* under the Fifth Amendment, but whether it is afforded by the Fifth Amendment *at all*. *Cf. Bolling* v. *Sharpe*, 347 U.S. 497. Constitutional history repels the suggestion that procedural fairness holds a status subordinate to any other right or privilege under the due process clause of the Fifth Amendment.

Actually, the Government has conceded away its suggestion that petitioner has not been denied "liberty" or "property" within the meaning of the Fifth Amendment. The Government admits (Gov't *Greene* Brief 32) that "the withholding of military secrets from petitioner might have the same practical consequences as would a legal bar to his employment in the aircraft industry." Nothing could be a clearer denial of "liberty" or "property" than a legal bar to employment. Yet the Government asks the Court to disregard its own concession and treat the case as though it involved nothing more than a casual observer seeking access to classified information for the mere sake of access.[9]

[9] Actually, petitioner has not sought access to classified information at all. His employer, Bell Aircraft, requested petitioner's clearance for access to "secret" information (R. 15-16) so that Bell and petitioner could continue an employment relationship satisfactory to both parties. The Government's contention that nothing is involved except access to classified information studiously avoids the realities of the situation; what is

No more in determining whether petitioner's "liberty" or "property" are involved than in determining whether the Executive had inherent power (p. 10, *supra*) will this Court prefer form to substance and close its eyes to the inevitable and conceded consequences of Governmental action. If, as is admitted, the consequences of a security risk determination are the same as if a legal bar to employment had been erected by the Government, we do not see how the constitutional norm of fundamental fairness in procedure can be held inapplicable.

III

The Sequence of Events Since Certiorari Was Granted By This Court Demonstrates Petitioner's Extraordinary Vulnerability to Renewed Security Hearings and Renders His Case Anything but Moot

Petitioner will not burden this Court with a full-scale reargument of the question of mootness. On February 17, 1959, petitioner filed his "Supplemental Memorandum for Petitioner on Mootness" answering the contentions previously made by the Government. Neither the Government's subsequent brief on the merits nor its Supplemental Memorandum setting forth the "modified" Regulation contains any argument on mootness nor any answer to petitioner's Supplemental Memorandum of February 17th. We, therefore, respectfully refer the Court to our initial "Opposition to Government's Suggestion of Mootness" and our "Supplemental Memorandum for Petitioner on Mootness," together with the discussion herein of the recently published "modification" in the Regulation, as an overwhelming

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actually and obviously involved is the Government's administrative action under the Industrial Security Program cutting across an existing contractual relationship between Bell and Taylor and depriving petitioner of his "liberty" and "property" in that contractual relationship—as well as in his livelihood and his reputation.

demonstration of this Court's continuing jurisdiction to resolve the very live controversy at bar.

While the initial briefs on mootness in this Court appeared to disagree concerning the applicable rule in cases where the Government discontinues conduct against which a private party seeks equitable relief, that disagreement has now been largely resolved. The Government concedes that this Court's rule hinges on the issue whether

> *"there is a strong, real, or substantial likelihood that the challenged government action will be repeated against the particular person"* (Memorandum in Reply on Mootness 16).

Actually this Court, in *United States* v. *W. T. Grant Co.*, 345 U.S. 629, 633, has recently adopted a formulation, more charitable to the party seeking relief, *requiring defendant to demonstrate that "there is no reasonable expectation that the wrong will be repeated."* But, whatever may be the precise formulation, the parties are in agreement that continuing jurisdiction hinges upon the "likelihood of recurrence" of the conduct challenged by petitioner.

Moreover, there is also apparent agreement that the mere granting of last-minute security "clearance" to petitioner has not, as such, afforded him protection against repeated subjection to the security "hearing" procedure against which he seeks relief. Nowhere in the Government's presentation is there any refutation of the material presented at pp. 21-25 of our initial Opposition to Mootness, demonstrating that security clearance is a matter of "continuous screening, scrutiny, and surveillance" and that those once seriously charged are regularly subjected to an unending series of security proceedings. All that the Government appears to be saying to this Court in its Memorandum in Reply on Mootness is that, unlike others in the security

program who have been subjected to repeated security proceedings, petitioner's "clearance", made in connection with a "general modification" of the standard of clearance, provides him with assurance against renewed proceedings. But, far from providing assurance against renewal, a brief review of the events since this Court granted certiorari on December 15, 1958, and of the "modified" Regulation itself, demonstrates that petitioner holds the most dubious and tenuous type of clearance, and would be particularly vulnerable to renewed security proceedings if the Government should succeed in disarming this Court of its power to afford relief to petitioner.

A. *The Sequence of Events Since This Court Granted Certiorari on December 15, 1958*

After certiorari had been granted, the Acting Secretary of Defense, on December 31, 1958, issued an order granting petitioner a security clearance "in the national interest." Thereafter, on January 9, 1959, the Government filed a Suggestion of Mootness urging that, since petitioner had been cleared, the controversy had ended. No indication was given this Court in the Government's Suggestion of Mootness of the unique "clearance" granted petitioner. Although there was an oblique reference to an order of the Acting Secretary of Defense, likewise issued on December 31, 1958 (see Suggestion of Mootness 10, 18), its effect on petitioner was neither referred to nor explained. In that order it was indicated that the Department was considering a revision in the Regulation, permitting Hearing Boards, in determining whether to grant access to classified information, to consider "the level of classified information at which access is sought, and to make a determination which takes that factor into account." As already indicated, there was no slightest intimation in the

Government's initial Suggestion of Mootness as to how this prospective change in the Regulation might affect the issue of mootness in petitioner's case or whether in fact it would affect it at all.

Since petitioner could perceive no possible relationship between the granting of a secret clearance to one the Government had just a matter of weeks earlier finally determined to be a perjurious ex-Communist and a possible change in the Regulation which would take into consideration that he was seeking access to "secret" information rather than to "confidential" or "top secret" information, petitioner's initial Opposition to Mootness, filed January 28, 1959, made no reference to the December 31 order of the Acting Secretary. Petitioner did, however, point out to the Court that he was the only known security defendant who had ever been "cleared" not in the interest of "national security" but only "in the national interest"; that the Secretary had violated his own regulation requiring the issuance of findings on each adverse allegation; and that, obviously, the Government had *not* determined petitioner to be innocent of the charges, but had simply sought, without confessing the unfairness of its "hearing" procedure, to remove the case from the Court's consideration.

On February 13, 1959 the Government filed its Memorandum in Reply on Mootness, conceding for the first time that petitioner had been given a "clearance" without ever being found either innocent or secure (at pp. 4-7). Moreover, the oblique reference in the Government's earlier Suggestion of Mootness that the prospective modification in the Industrial Security Regulation would take into account "the level of classified information at which access is sought" was now dropped. Instead, the Government suggested that the prospective Regulation would provide something altogether different: rather than permitting consideration of the

"level of clearance" ("confidential", "secret" or "top secret"), the Government informed this Court that the prospective modification would take into account the accused individual's *particular job position*. Thus the Government in its Memorandum in Reply referred to "consideration of the employee's position" (p. 13) and of his "level of position" (p. 14); and this Court was expressly informed that petitioner had been "cleared," even assuming the truth of all the findings that had been made against him (at p. 6), because he

> "is a lathe operator and he was a tool and die maker (milling machine operator) in a large aircraft plant—not an important official with wide supervisory or executive functions . . ." (at p. 5).

It was thus repeatedly made to appear that the prospective modification in the Regulation would take into account the particular job position held by the individual rather than the "level of clearance" sought for him.

On February 17, 1959, petitioner filed his Supplemental Memorandum on Mootness analyzing the Government's latest representations concerning the as yet unpublished modification in the Regulation. Petitioner pointed out (n. 4, p. 4) how "Taylor-made" was the "general modification" which was concededly conceived *only* "when petitioner's case was brought to the attention of the Acting Secretary," was never mentioned in a published document until the very day that petitioner was "cleared", and had yet to be stated in a form which permitted its promulgation. Moreover, petitioner demonstrated that, if he had indeed received clearance on the basis of such a tenuous balance between his particular job position and the charge of perjurious ex-Communism, then at any moment that tenuous balance was subject to reversal by any change in

his working position at Bell Aircraft or elsewhere (at pp. 5-6). Apparently petitioner's suggestions as to the unworkability of this proposal and his contention that it would "increase rather than decrease the likelihood of petitioner's subjection to renewed proceedings" (at p. 5) was convincing to the Government, for the subsequent actual modification of the Regulation, as we shall see, completely abandoned the idea of weighing a particular job position against the derogatory information.

On March 24, 1959, the much heralded change in the Regulation was finally furnished to this Court (Supplemental Memorandum for the Respondents), still without any explanation as to how it might reduce petitioner's vulnerability to renewed security proceedings. And the "modification," as actually promulgated, utterly contradicts the Government's prognostications as to its content, made only a month before at a time when the Government was urgently seeking to avoid this Court's review of the merits. Instead of taking into account "the employee's position", "level of position", and whether or not he is "an important official with wide supervisory or executive functions," the published change *has nothing whatever to do with the employee's job or position.* All that the "change" in the Regulation does is to make clear that the "level of clearance" sought (confidential, secret, or top secret) shall be taken into account—as it has always been in the past.[10]

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[10] It is quite clear that the so-called modification in the Regulation, expressly permitting Hearing Boards to consider which "level of clearance" is being sought, is not in fact a modification at all, for the Hearing Boards have *always* been required to consider the level of clearance under review:

Even prior to the "modification", every case reaching the Hearing Board involved a clearance application only for a particular category of classified information—i.e., confidential, secret, or top secret. See R. 30, and case summaries appended to First Annual Report, Industrial

To summarize what the Government has done since this Court granted certiorari:

1. In its initial Suggestion of Mootness, on January 9, 1959, the Government implied to the Court that petitioner had been cleared like any other security defendant.

2. Then, in its Memorandum in Reply on Mootness, on February 13, 1959, the Government argued to the Court that petitioner had been cleared because of a policy of weighing the particular job position against the derogatory information.[11]

Personnel Security Review Program (1956), pp. 45, 61, 63, 66, 85, *et seq.* While the formal findings of the Hearing Boards did not expressly refer to the classification level at which clearance was being approved or rejected, the decision was always based on the level of access originally sought, and again expressly reflected in the "letter of consent" subsequently issued to the contractor where the individual was cleared. Department of Defense Form 560, Sec. 6-110, Armed Forces Industrial Security Regulation, printed in Bureau of National Affairs Manual on Government Security and Loyalty, p. 25:27, 81; see also Brown, *Loyalty and Security* 243 (1958).

Equally important, the Regulation itself always required the Hearing Board's consideration of the level of clearance sought. The ultimate determination which Hearing Boards were required to make under the Regulation (Sec. IV, Par. 20e.) was whether the "granting of *clearance*" was proper. "Clearance" in turn was specifically defined by Sec. I, Par. 2e of the Regulation, even before its amendment, in terms of the "confidential", "secret" and "top secret" classification of Ex. Order 10501 (18 Fed. Reg. 7049):

> "The term 'clearance' means an administrative determination, in accordance with approved policy, that a contractor or contractor employee is eligible to have access to classified information *of specified categories classified in* accordance with Executive Order 10501 . . ." (emphasis supplied).

Thus a Hearing Board could not, without disregarding the express definition of "clearance" prescribed by the Regulation itself, have granted a clearance without regard to the classification level sought. All that the "modification" has accomplished is to articulate in certain additional sections of the Regulation the classification level which, by virtue of the Regulation's definition of "clearance", has always been an integral part of the Hearing Boards' determination.

[11] The Government's suggestion in its February 13 Memorandum in Reply on Mootness (at p. 5) that this new policy was already in effect

3. Finally, in the modification in the Regulation presented to this Court on March 24th, the Government implies, without even expressly so stating or giving any reason therefor, that petitioner was cleared because of the change in the Regulation to take into account different "levels of clearance."

The Government's elusive and constantly varying statements to this Court as to the reasons for petitioner's clearance and as to the new policy being adopted in the modified Regulation are confusing to petitioner, as they no doubt are to this Court. But we respectfully suggest that one point does emerge without confusion—the Government had no new precise policy on December 31st affecting petitioner's case in any way and its sole reason for "clearing" petitioner was the proximity of this Court's process. We turn now to indicate how the Government's tortuous course in this case actually serves to reveal petitioner's extraordinary vulnerability to renewed proceedings rather than to assure against such renewal.

B. *Petitioner's Extraordinary Vulnerability to Renewed Proceedings*

The Government refuses to exonerate petitioner (Memorandum in Reply 4-7). Although the Defense Department has expunged the findings against him, he remains a perjurious ex-Communist for the purposes of the Industrial Security Program. As such, he is extraordinarily vulnerable to renewed proceedings.

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was questioned by petitioner in his Supplemental Memorandum (at p. 5) on the ground that no regulation or instructions to the field placing the policy into effect had been reported to the Court. If any such policy was actually in effect on February 13, when the Government's Memorandum in Reply was filed, it had a short life, for it was abandoned by March 24th when the "modification" in the Regulation was presented to this Court.

If the Government's representations in its February 13th Memorandum in Reply on Mootness were correct, then petitioner was cleared because even a perjurious ex-Communist may hold the position of a lathe operator with access to "secret" information. But, as we pointed out in our February 17th Supplemental Memorandum on Mootness, a security clearance based on a particular job position would be an exceptionally tenuous one. In petitioner's work at Bell Aircraft, the classified materials his job requires him to see are not fixed but changing; at any moment the tenuous balance of his "position and personal history" may shift without any initiative on his part. Furthermore, he may himself desire to obtain different work at Bell or elsewhere and the slightest shift in job position would bring a new round of security proceedings. Therefore, if the Government's representations that petitioner's clearance was based entirely on the job position he holds were correct, then petitioner, as one still deemed a perjurious ex-Communist, may at any moment be subjected to renewed proceedings.

But now that the "modified" Regulation has finally appeared, there is a very real question whether the Government's representations referred to in the previous paragraph were correct. The change in the Regulation actually promulgated takes no account of job position; all it does is refer to level of clearance which has always been considered (n. 10, p. 21, *supra*). Although the Government refuses to say how this "level of clearance" consideration affects petitioner, we cannot believe that the Government would suggest to this Court that a perjurious ex-Communist may have access to all information at the "secret" level regardless of job position. Since such a suggestion is totally implausible, it seems far more likely that petitioner's clearance had nothing whatever to do with the "modified" Reg-

ulation, and was either based upon the job position policy now abandoned or, as we have already suggested, was simply based upon the proximity of this Court's process. In either event, the removal of this Court's process would leave petitioner immediately in jeopardy of renewed proceedings.

Petitioner's vulnerability to renewed proceedings can fairly be called unique. Unlike every other security defendant who has been cleared, petitioner has been granted "clearance" without exoneration on the merits of the extremely serious charges against him. As the only accused "cleared" without being found either secure or innocent of grave security charges, petitioner holds the most precarious and momentary security clearance of any employee now subject to the Industrial Security Program.

No more than private wrongdoers may the Government be allowed to tamper with justice in an attempt to prevent equitable relief which might limit the Government's ability to continue its wrongful conduct. Accepting the Government's own formulation that this Court retains jurisdiction where "there is strong, real, or substantial likelihood that the challenged Government action will be repeated against the particular person," it is eminently clear that petitioner's case meets that test. As long as petitioner remains so clearly subject to the unfair hearing procedure against which he seeks relief, this Court has the power, consistently recognized since *Trans-Missouri* and *Southern Pacific*, to adjudicate his case. A serious and real controversy continues between petitioner and his Government over which this Court retains its constitutional power of adjudication.

Conclusion

It is respectfully submitted that the judgment of the District Court be reversed with instructions to grant petitioner appropriate declaratory and injunctive relief.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 504.—October Term, 1958.

Charles Allen Taylor, Petitioner, v. Neil McElroy, A. Tyler Port.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[June 29, 1959.]

Per Curiam.

This is a companion case to *Greene* v. *McElroy*, decided today, and concerns an industrial worker who was denied clearance to classified defense information and consequently discharged from his employment as a lathe operator and tool and die maker at a plant which manufactured aircraft for the Government.

Prior to 1956, petitioner had a Confidential clearance. In that year, he was denied Secret clearance and his Confidential clearance was suspended. He demanded and was accorded a hearing similar to the one afforded petitioner in *Greene* v. *McElroy*, *supra*. The Hearing Board concluded that petitioner's access to classified defense information was "not clearly consistent with the interests of national security." Later, he was afforded another hearing with similar results. Petitioner then filed an action asking for a declaration that he was entitled to a hearing at which he could confront the informants whose statements were used against him, a declaration that the denial of clearance violated his rights under the Fifth Amendment, and an injunction restraining respondents from enforcing the decision denying clearance. Respondents prevailed on a motion for summary judgment and, on December 15, 1958, we granted certiorari to the Court of Appeals before argument was had in that court because

of the pendency here of *Greene* v. *McElroy*, *supra*. 358 U. S. 918.

On December 31, 1958, the Department of Defense notified all interested parties, including petitioner, his counsel, and his ex-employer, that the Secretary of Defense had determined "that the granting of clearance to Mr. Charles Allen Taylor for access to Secret defense information is in the national interest." On January 9, 1959, respondents filed a suggestion of mootness. We postponed consideration of that question to the hearing of the case on the merits. 359 U. S. 901.

At the oral argument in this case, the Solicitor General made the following representations:

1. The Secretary of Defense in determining that petitioner was eligible for clearance to obtain access to information classified "Secret" did not intend by his reference to "the national interest" to differentiate between petitioner's status and that of other employees whose eligibility for clearance has been found to be "clearly consistent with the interests of national security."*

2. The findings of the various Hearing Boards which passed on petitioner's fitness for clearance have been expunged from all records and no longer have any vitality or effect.

3. Petitioner was afforded clearance on December 31, 1958, after having been denied clearance for over two years, because of a change in applicable Department of Defense regulations.

4. Pursuant to existing Department of Defense procedures, the evidence in petitioner's file will not be used again as a basis for revoking petitioner's clearance.

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*The respondents have filed a letter in this Court from the General Counsel of the Department of Defense which makes an identical representation.

5. Petitioner is eligible under applicable regulations for compensation for wages lost during the time he was unemployed due to the clearance revocation and denial.

In view of the fact that petitioner has received clearance, the ultimate relief which he demanded, and in view of the representations of the Solicitor General to the effect that petitioner stands in precisely the same position as all others who have been granted clearance, that the evidence in petitioner's file will not be used against him in the future, and that the findings against petitioner have been expunged, this case is moot.

The judgment of the District Court is vacated and the case is remanded to that court with instructions to dismiss the complaint as moot.

It is so ordered.